

The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

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Subscription price to individuals, not members of the Association nor of its Bureau of Comparative Law, \$3 a year. To those who are members of the Association (and so of the Bureau), the price is \$1.50, and is included in their annual dues.

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Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, Franklin Bank Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on Publications, Carroll T. Bond, Baltimore, Md.

OFFICE OF PUBLICATION

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1916

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**Statement of the Ownership, Management, Circulation, Etc., required
by the Act of Congress of August 24, 1912,**

of THE AMERICAN BAR ASSOCIATION JOURNAL, published quarterly at Baltimore, Maryland,
for April 1st, 1916.

STATE OF MARYLAND, BALTIMORE CITY.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared George Whitelock, who, having been duly sworn according to law, deposes and says that he is the managing editor of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, THE AMERICAN BAR ASSOCIATION, Baltimore, Md.
Editor, Hon. Carroll T. Bond, Court House, Baltimore, Md.
Managing Editor, George Whitelock, Baltimore, Md.
Business Managers, Executive Committee American Bar Association.

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent. or more of the total amount of stock).

THE AMERICAN BAR ASSOCIATION.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent. or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state).

NONE.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

Sworn to and subscribed before me this 22d day of March, 1916.

[SEAL]

HARRY E. POHLMANN.
(My commission expires May 1st, 1916.)

*Entered as second-class Matter March 17, 1915, at the Post Office at Baltimore, Maryland,
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ATLANTA, GEORGIA

The American Bar Association Journal

VOL. II

JULY, 1916

No. 3

1916

American Bar Association

PROGRAM

OF

MEETING

AT

CHICAGO, ILLINOIS

August 30, 31, September 1

(WEDNESDAY, THURSDAY, FRIDAY)

HEADQUARTERS

The Headquarters of the Association will be at the Congress Hotel, 504 S. Michigan Boulevard.

The offices of the Secretary and Treasurer will be located in the Elizabethan Room, Ground Floor, Congress Hotel.

The Committee on Arrangements of the Illinois State and Chicago Bar Associations will have an office in the German Room, near the main entrance, ground floor, Congress Hotel.

The business sessions of the Association will be held and the formal addresses before it will be delivered in the Gold Room, Congress Hotel.

The Executive Committee of the Association will meet on Tuesday, August 29, 9 P. M., in the English Room, Mezzanine Floor, Lake Front, Congress Hotel.

The General Council of the Association will meet in the Green Room, Mezzanine Floor, Congress Hotel.

The first meeting of the Council will be held on Wednesday, August 30, 9 A. M.

REGISTRATION

The Secretary's office will continue the system of REGISTRATION CARDS. The cards may be obtained at the Secretary's office or in the Gold Room.

Cards should be signed *plainly*. All blanks should be filled and cards returned *promptly* to the Secretary's office, Congress Hotel.

A printed list of members in attendance at the meeting will be prepared from the registration cards. The names of those members only whose cards are received before 8 o'clock on Tuesday evening, August 29, will appear in the first edition.

The Secretary's office will open for registration on Monday morning, August 28, at 10 o'clock.

BUSINESS PROGRAM OF THE ASSOCIATION

WEDNESDAY MORNING, AUGUST 30, AT 10 O'CLOCK.

Address of Welcome: Hon. Edward F. Dunne, Governor of Illinois, who will be introduced by Albert D. Early, President of the Illinois State Bar Association.

President's Address: Elihu Root, President of the Association.

Report of the Secretary.

Report of the Treasurer.

Report of the Executive Committee.

Nomination and Election of Members.

State delegations will meet in the Gold Room, at the CLOSE of this session to nominate members of the General Council, and also to select a Vice-President and Local Council for each state. (If a delegation desires to hold its meeting elsewhere, notice should be given to the Secretary PRIOR to this session in order that due announcement may be made.) See page 366.

WEDNESDAY EVENING, AUGUST 30, AT 8 O'CLOCK.

Stephen S. Gregory, of Illinois, former President of the Association, will preside at this session.

Address: Lindley M. Garrison, former Secretary of War.

Election of the General Council.

Reception in the Art Institute, at 9.30 P. M. (see page 365).

THURSDAY MORNING, AUGUST 31, AT 10 O'CLOCK.

Frederick W. Lehmann, of Missouri, former President of the Association, will preside at this session.

Reports of Standing Committees:

Jurisprudence and Law Reform.
Judicial Administration and Remedial Procedure.
Legal Education and Admissions to the Bar.
Commerce, Trade and Commercial Law.
International Law.
Publications.
Grievances.
Law Reporting and Digesting.
Patent, Trade-Mark and Copyright Law.
Insurance Law.
Taxation.
Uniform State Laws.
Publicity.
Membership.
Professional Ethics.
Noteworthy Changes in Statute Law.
Obituaries.

Reports of Special Committees:

Uniform Judicial Procedure.
To Suggest Remedies and Formulate Proposed Laws to
Prevent Delay and Unnecessary Cost in Litigation.
To Oppose the Judicial Recall.
To Present to Congress Bills Relating to Courts of
Admiralty.
Government Liens on Real Estate.
Compensation to Federal Judiciary.
Drafting of Legislation.
Comparative Law Bureau.
Reports and Digests.
Improvement of Accommodations of U. S. Supreme Court.

Visit to the South Shore Country Club at 2 P. M. (see page 365).

THURSDAY EVENING, AUGUST 31, AT 8 O'CLOCK.

Henry St. George Tucker, of Virginia, former President of the Association, will preside at this session.

Address: "Lawyers and the Public," William E. Borah,
United States Senator from Idaho.

Unfinished Reports of Committees.

FRIDAY MORNING, SEPTEMBER 1, AT 10 O'CLOCK.

Address: "Administrative Discretion and Private Rights,"
Frank J. Goodnow, of Maryland, President of Johns Hopkins
University.

Unfinished Reports of Committees and other Unfinished
Business.

FRIDAY AFTERNOON, SEPTEMBER 1, AT 2.30 O'CLOCK.

Nomination of Officers.

Miscellaneous Business.

Election of Officers.

Annual Dinner at 7 P. M. (see pages 365, 366).

PROGRAMS OF SUBSIDIARY AND ALLIED BODIES

Conference of Bar Association Delegates

A special conference of representatives of the American Bar Association and delegates from State and Local Bar Associations in the United States, will be held to consider what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between the American Bar Association and such other Associations. The conference will convene in the Gold Room, Congress Hotel, on Monday, August 28, at 10 o'clock A. M.

Section of Legal Education

The sessions will be held in the Green Room, Mezzanine Floor, Congress Hotel.

The sessions on Tuesday afternoon and evening, August 29, will be especially for State Bar Examiners and Law School Teachers, under the auspices of the Section, and will be devoted chiefly to the discussion of Propositions VII, VIII, X, XI, XII, XIII, XIV, and XV, submitted by the Committee on Standard Rules for Admission. (See A. B. A. Report for 1915, pp. 747-758.)

TUESDAY, AUGUST 29, AT 3 P. M.

Opening remarks by the Chairman of the Section, Henry Stockbridge, of Maryland.

Discussions of Propositions VII and VIII, and X and XI. These discussions will be opened respectively by Charles L. McKeehan, of Pennsylvania, and William R. Vance, of Minnesota.

TUESDAY, AUGUST 29, AT 8 P. M.

Discussion of Proposition XII and of Propositions XIII, XIV, XV. These discussions will be opened respectively by John C. Rose, of Maryland, and Hollis R. Bailey, of Massachusetts.

WEDNESDAY, AUGUST 30, AT 3.30 P. M.

Annual address by the Chairman of the Section, Henry Stockbridge, of Maryland.

A paper on "The Law School and the Practising Lawyer," by Eldon R. James, of Missouri.

The discussion of this paper will be opened by H. V. Mercer, of Minnesota.

Resolutions by the Section.

Comparative Law Bureau

The session will be held in the Oak Room, Mezzanine Floor, Lake Front, Congress Hotel, on Wednesday afternoon, August 30, at 2 o'clock.

The order of business will be as follows:

Annual Address of the Director, Simeon E. Baldwin, of Connecticut.

Treasurer's Report.

Report to American Bar Association.

Discussion of submitted topics.

Election of Officers and Managers.

New Business.

Membership and participation at the meeting are classified as follows:

Class A. All Members of the American Bar Association.

Class B. State Bar Associations, by three delegates each.

Class C. Law Schools, Law Libraries, Institutions of Learning, City and County Bar Associations, by two delegates each.

Class D. Individual members of the Bureau, who are not members of the American Bar Association.

Section of Patent, Trade-Mark and Copyright Law

The session will be held in the Oak Room, Mezzanine Floor, Lake Front, Congress Hotel, on Tuesday afternoon, August 29, at 3.30 o'clock.

Address by Robert H. Parkinson, of Chicago, Chairman.

Address by Melville Church, of Washington, D. C., on
"Modern Accountings in Patent and Trade-Mark
Cases."

Address by Livingston Gifford, of New York, on
"Patent Situation from the Manufacturer's Stand-
point."

General Discussion.

Miscellaneous Business.

Election of Officers.

Judicial Section

Tuesday evening, August 29, 1916, at 7 o'clock, there will be an informal dinner at the Congress Hotel, Florentine Room, for all members of the Section, the officers, members of the Executive Committee, and former presidents of the American Bar Association.

The business session will be held in the Florentine Room, Second Floor, Congress Hotel (use main elevator), on Wednesday afternoon, August 30, at 2 o'clock.

Address of Welcome: Charles S. Cutting, President of the Chicago Bar Association.

The session will be opened with a brief informal talk by Elihu Root, President of the American Bar Association.

Address by Hon. Mahlon Pitney, Associate Justice of the United States Supreme Court.

Address by John W. Davis of West Virginia, Solicitor General of the United States.

Report of Executive Committee on the resolutions adopted in 1915 with reference to a more definite plan for the work of the Section.

Discussion of report by four judges (names to be announced later).

Informal discussion of report.

Appointment of committees, and unfinished business.

New Business.

Election of Officers.

Commissioners on Uniform State Laws

The Twenty-sixth Annual Conference will be held in the Florentine Room, Second Floor, Congress Hotel (use main elevator), beginning Wednesday afternoon, August 23, at 2 o'clock. The sessions will continue on Thursday, Friday, Saturday, Monday and Tuesday, August 24, 25, 26, 28 and 29.

The Executive Committee of the Commissioners will meet on Wednesday, August 23, at 10 A. M., in the Oak Room, Mezzanine Floor, Lake Front, Congress Hotel.

(The following program is subject to change in the order, by vote of the Executive Committee at its meeting to be held Wednesday, August 23.)

Address of Welcome: Hon. Edward F. Dunne, Governor of Illinois.

Address of the President, William H. Staake of Pennsylvania.

Reports of other officers.

Appointment of Auditing and Nominating Committees.

Report of Executive Committee.

Reports of the Committees on

Registration of Title to Land.

Admission to Practice and Registration of Physicians and Nurses.

Extradition.

Co-operation with the American Institute of Criminal Law and Criminology.

Reporting and Prevention of Occupational Diseases and of Industrial Accidents.

Legislative Drafting.

Automobile Legislation.

Vital and Penal Statistics.

Judicial Decisions.

Insurance.

Marriage and Divorce.

Commercial Law.

Publicity.

Consideration of Uniform Acts on the following subjects, the order of their consideration and the time allotted to each to be determined by the Executive Committee at its meeting on the morning of August 23, at the Congress Hotel, namely:

- a. Automobiles.
- b. Land Registration.
- c. Prevention of Occupational Diseases.
- d. Partnership with Contributing Members.
- e. Fraudulent Conveyances (first draft).
- f. Conditional Sales.

Appointment of new committees.

An informal dinner will be given to the National Conference of Commissioners by the Chicago Bar Association at the University Club, Thursday, August 24, at 6.30 P. M.

Adjournment on August 29.

American Institute of Criminal Law and Criminology

The eighth annual meeting of the American Institute of Criminal Law and Criminology will convene on Tuesday, August 29, at 10 A. M., in the English Room, Congress Hotel.

FIRST SESSION.

TUESDAY, AUGUST 29, 10 A. M.

Annual Address of the President, Ira E. Robinson, of West Virginia.

Report of Secretary, Edwin M. Abbott, of Pennsylvania.

Report of Treasurer, Bronson Winthrop, of New York.

Report of Executive Board, John H. Wigmore, of Illinois, Chairman.

Report of Committee on "Insanity and Criminal Responsibility," Edwin R. Keedy, of Pennsylvania, Chairman.

Discussion.

Report of Committee on "Probation and Suspended Sentence," Arthur W. Towne, of New York, Chairman.

Discussion.

Report of Committee on "Modernization of Criminal Procedure," Robert W. Millar, of Illinois, Chairman.

Discussion.

Report of Society of Military Law, Henry W. Ballantine, of Wisconsin, Secretary.

SECOND SESSION.

TUESDAY, AUGUST 29, 2 P. M.

Report of Committee on "Crime and Immigration," Robert Ferrari, of New York, Chairman.

Discussion.

Report of Committee on "Sterilization of Criminals," Joel D. Hunter, of Illinois, Chairman.

Discussion.

Report of Committee on "Indeterminate Sentence, Release on Parole and Pardon," Edward Lindsay, of Pennsylvania, Chairman.

Discussion.

Report of Committee on "Criminal Statistics," John Koren, of Massachusetts, Chairman.

Discussion.

Appointment of Committee on Nominations.

THIRD SESSION.

TUESDAY, AUGUST 29, 8 P. M.

Annual Address, Robert O. Harris, of Massachusetts, "Probation in Its Relation to Social Welfare."

Report of Committee on "State Societies and New Memberships," Frank K. Nebeker, of Utah, Chairman.

Report of Committee on "Promotion of Institute Measures," Frederic B. Crossley, of Illinois, Chairman.

Discussion.

Report of Committee on "Publications," Robert H. Gault, of Illinois, Chairman.

Report of Committee on Nominations.

Election of Officers.

Unfinished Business.

New Business.

Annual Meeting of the American Society of Military Law

WEDNESDAY, AUGUST 30, 2.30 P. M.

Address by Captain Ridley McLean, U. S. N., of the District
of Columbia, President.

Report of the Secretary, Henry W. Ballantine, of Wisconsin.

Paper by Colonel Nathan William MacChesney, National Guard
of Illinois.

Paper by Colonel B. C. Chipperfield, of Illinois, "The Legal Status
of the National Guard under the Army Reorganization Bill."

Paper by Thomas W. Shelton, of Virginia, "The Pioneers'
Military Establishment—A Question of the Constitution."

Unfinished Business.

New Business.

Nomination and Election of Officers.

ENTERTAINMENTS

Reception

A reception will be given by the Illinois State Bar Association and the Chicago Bar Association to the President and members and guests of the American Bar Association and ladies accompanying them, on Wednesday, August 30, at 9.30 P. M., in the Art Institute, S. Michigan Boulevard and Adams Street. *No tickets of admission will be required.*

South Shore Country Club

The members and guests of the Association and ladies accompanying them will be taken on Thursday, August 31, in automobiles through the Chicago Park System to the South Shore Country Club, where afternoon tea will be served. They will leave Congress Hotel at 2 P. M. and return about 6.30 P. M. *Tickets may be obtained at the Secretary's office, Congress Hotel.*

Annual Dinner

The Annual Dinner of the Association will be given in the Gold Room of the Congress Hotel, on Friday, September 1, at 7 P. M. Elihu Root, of New York, will preside.

For additional information as to the Dinner, see "Special Announcements," page 366.

The Illinois and Chicago Bar Associations invite the ladies who accompany guests and visiting members of the Association to dine at the same time in the Florentine Room of the Congress Hotel. *Tickets may be obtained at the Secretary's office, Congress Hotel.*

SPECIAL ANNOUNCEMENTS

The Annual Dinner will be given as above noted. A charge of \$5 for dinner ticket will be made to each member and delegate. A limited number of guest tickets will be furnished to members at a charge of \$7 each.

Members are requested to apply promptly for dinner tickets. They will be on sale at the Treasurer's office, Elizabethan Room, Congress Hotel, on and after Tuesday, August 29, 10 A. M. *Positively no tickets will be sold after 12 o'clock noon Friday, September 1.*

The United States Postal authorities at Chicago will lend to the Association pigeon-hole furniture for sorting mail, which will be placed in the office of the Secretary, Elizabethan Room, Congress Hotel. To facilitate distribution the members are requested to have all mail (not otherwise specifically directed) addressed care of the "**American Bar Association.**"

The Remington Typewriter Company will loan machines for the Secretary's office, and will in all probability also furnish a public stenographer for members at reasonable rates.

The members from each state will meet in the Gold Room immediately upon adjournment of the first business session (Wednesday, August 30, 10 A. M.) for the purpose of nominating a member of the General Council, and also to select a Vice-President and Local Council for each state. Delegations desiring to meet at a place other than the Gold Room should notify the Secretary *prior to the opening* of the first business session so that appropriate announcement may be made.

No list should contain more than six names in all; one for General Council, one for Vice-President and four for Local Council. All must be members of the Association.

Lists should be left at the Secretary's office, Congress Hotel, not later than 4 P. M. on Wednesday, August 30, in order that they may be prepared for the printer and issued to members on Thursday morning.

Election of the General Council will take place at the business session of Wednesday evening, August 30.

The attention of standing committees is called to the provision of the By-Laws by which they are required to meet every year, at such hours as the respective Chairmen may appoint. All such committees will meet at the Congress Hotel on Wednesday morning, August 30, at 9 o'clock, when a separate room for each committee will be assigned.

The attention of all committees is called to the following provision of the By-laws:

"All Committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed, together with a draft of bill embodying the views of the Committee, whenever legislation shall be proposed. Such report shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved unless there has been a report of a committee, either in favor of or against the same, and unless such legislation be approved by a two-thirds vote of the members of the Association present. Where the report of a committee has been printed it shall not be read before a meeting of the Association unless directed by a majority vote of those present at the meeting, but the chairman of the Committee shall state the purport and substance thereof to the meeting.

In preparing for debate, members are requested to bear in mind the By-law that no person shall speak more than ten minutes at a time nor more than twice on one subject.

New Members

It is desirable that nominations of new members be submitted to the General Council at its first session on Wednesday morning. Forms and any information desired will be furnished by the Membership Committee at the headquarters of the Association.

The dues are \$6 a year for members, inclusive of cost of JOURNAL. Delegates who are not members pay no dues. There is no initiation fee. There are no additional dues for membership in a Section.

Hotel Reservations

Frederick A. Brown, 1518 Otis Building, Chicago, Ill., has kindly consented to take charge of reservations for members and delegates. In writing to Mr. Brown, please state preference of hotel, time of arrival, period for which rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels, with diagram showing locations, will be found on supplementary pages v and vi at the back of this JOURNAL.

The following rooms at the Congress Hotel are available for Committee meetings and will be assigned on application of Chairmen to the Secretary, viz.: A18, 20, 22, 24, 26, 28, A6, A8, and Elizabethan Balcony (all on Mezzanine Floor).

By order of the Executive Committee.

GEORGE WHITELOCK, *Secretary*,
W. THOMAS KEMP,
GAYLORD LEE CLARK, } *Assistant Secretaries*,
1416 Munsey Building, Baltimore, Md.

CHRONOLOGICAL RÉSUMÉ

(Meetings below indicated will be held in the Congress Hotel unless otherwise stated.)

AUGUST-SEPTEMBER, 1916.

WEDNESDAY, AUGUST 23D.

10.00 A. M. Executive Committee of the National Conference of Commissioners on Uniform State Laws. *Oak Room.*

2.00 P. M. Opening session of National Conference of Commissioners on Uniform State Laws. *Florentine Room.*

(The sessions of the Conference will continue August 24, 25, 26, 28 and 29.)

THURSDAY, AUGUST 24TH.

6.30 P. M. Informal dinner of National Conference of Commissioners on Uniform State Laws. *University Club.*

MONDAY, AUGUST 28TH.

10.00 A. M. Special conference of representatives of American Bar Association and delegates from State and Local Bar Associations. *Gold Room.*

Sessions of National Conference of Commissioners on Uniform State Laws, continued. *Florentine Room.*

TUESDAY, AUGUST 29TH.

Closing sessions of National Conference of Commissioners on Uniform State Laws. *Florentine Room.*

10.00 A. M. Treasurer's office opens for sale of dinner tickets. *Elizabethan Room.*

10.00 A. M. American Institute of Criminal Law and Criminology. *English Room.*

2.00 P. M. American Institute of Criminal Law and Criminology. *English Room.*

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- 3.00 P. M. Section of Legal Education. (Session of State Bar Examiners and Law School Teachers.) *Green Room.*
- 3.30 P. M. Section of Patent, Trade-Mark and Copyright Law. *Oak Room.*
- 7.00 P. M. Informal Dinner, Judicial Section. *Florentine Room.*
- 8.00 P. M. American Institute of Criminal Law and Criminology. *English Room.*
- 8.00 P. M. Section of Legal Education. *Green Room.*
- 9.00 P. M. Executive Committee of the Association. *English Room.*

WEDNESDAY, AUGUST 30TH.

- 9.00 A. M. General Council of the Association. *Green Room.*
- 10.00 A. M. **First Session** of American Bar Association. *Gold Room.*
- Address of Welcome, Hon. Edward F. Dunne, Governor of Illinois.
- President's address, Elihu Root.
- 2.00 P. M. Judicial Section. *Florentine Room.*
- 2.00 P. M. Comparative Law Bureau. *Oak Room.*
- 2.30 P. M. American Institute of Criminal Law and Criminology (Section of American Society of Military Law). *English Room.*
- 3.30 P. M. Section of Legal Education. *Green Room.*
- 8.00 P. M. **Second Session** of American Bar Association. *Gold Room.*
- Address, Lindley M. Garrison.
- 9.30 P. M. Reception to members and guests by the Illinois State Bar and Chicago Bar Associations. *Art Institute*, Michigan Boulevard and Adams Street.

THURSDAY, AUGUST 31ST.

- 10.00 A. M. **Third Session** of American Bar Association. *Gold Room.*
- Presentation of reports of committees.

2.00 P. M. Visit to the South Shore Country Club, from Congress Hotel.

8.00 P. M. **Fourth Session** of American Bar Association. *Gold Room.*

Address, William E. Borah.

FRIDAY, SEPTEMBER 1ST.

10.00 A. M. **Fifth Session** of American Bar Association. *Gold Room.*

Address, Frank J. Goodnow.

Unfinished business.

12.00 M. Sale of dinner tickets closes at Treasurer's office. *Elizabethan Room.*

2.30 P. M. **Sixth Session** of American Bar Association. *Gold Room.*

Unfinished business.

7.00 P. M. Annual Dinner of American Bar Association. *Gold Room.*

7.00 P. M. Dinner to ladies accompanying guests and visiting members. *Florentine Room.*

OFFICERS

1915-1916.

PRESIDENT,

ELIHU ROOT, *New York, N. Y.*

SECRETARY,

GEORGE WHITELOCK, *Baltimore, Md.*

TREASURER,

FREDERICK E. WADHAMS, *37 Tweddle Building, Albany, N. Y.*

ASSISTANT SECRETARIES,

W. THOMAS KEMP, *1416 Munsey Building, Baltimore, Md.*

GAYLORD LEE CLARK, *1416 Munsey Building, Baltimore, Md.*

EXECUTIVE COMMITTEE,

EX-OFFICIO

THE PRESIDENT,

THE SECRETARY,

THE TREASURER,

PETER W. MELDRIM,
Savannah, Ga.

WILLIAM C. NIBLACK, *Chicago, Ill.*

SELDEN P. SPENCER, *St. Louis, Mo.*

WILLIAM P. BYNUM, *Greensboro, N. C.*

CHAPIN BROWN, *Washington, D. C.*

CHARLES N. POTTER, *Cheyenne, Wyo.*

JOHN LOWELL, *Boston, Mass.*

CHARLES BLOOD SMITH, *Topeka, Kans.*

SECTION OF LEGAL EDUCATION.

HENRY STOCKBRIDGE, *Baltimore, Md., Chairman.*

CHARLES M. HEPBURN, *Bloomington, Ind., Secretary.*

SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.

ROBERT H. PARKINSON, *Chicago, Ill., Chairman.*

ERNEST W. BRADFORD, *Washington, D. C., Secretary.*

JUDICIAL SECTION.

ORRIN N. CARTER, *Chicago, Ill., Chairman.*

GAYLORD LEE CLARK, *Baltimore, Md., Secretary.*

COMPARATIVE LAW BUREAU.

SIMEON E. BALDWIN, *New Haven, Conn., Director.*

ROBERT P. SHICK, *Philadelphia, Pa., Secretary.*

AXEL TEISEN, *Philadelphia, Pa., Assistant Secretary.*

EUGENE C. MASSIE, *Richmond, Va., Treasurer.*

ASSOCIATION OF AMERICAN LAW SCHOOLS.

WALTER W. COOK, *Chicago, Ill., President.*

EUGENE A. GILMORE, *Madison, Wis., Secretary-Treasurer.*

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

WILLIAM H. STAAKE, *Philadelphia, Pa., President.*

NATHAN WILLIAM MACCHESNEY, *Chicago, Ill., Vice-President.*

GEORGE B. YOUNG, *Newport, Vt., Secretary.*

THOMAS A. JENCKES, *Providence, R. I., Treasurer.*

AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

IRA E. ROBINSON, *Charleston, W. Va., President.*

EDWIN M. ABBOTT, *Philadelphia, Pa., Secretary.*

II. GENERAL ANNOUNCEMENTS.

REQUEST TO MEMBERS.

Members of the Association are requested to advise the Secretary immediately of any change in address; this will insure delivery of all mail matter.

REQUEST TO VICE-PRESIDENTS.

Vice-Presidents are requested to notify the Secretary promptly of the death of any member of the Association from their respective states; the Secretary has no other source of information, except the Postoffice Department, and desires for the sake of absolute accuracy to get authentic information.

BINDING THE JOURNAL.

The Secretary has received a number of communications from members asking whether or not provision will be made to bind THE AMERICAN BAR ASSOCIATION JOURNAL in uniform binding. He is informed by The Lord Baltimore Press that this can be done at a cost of \$1.50 per volume. In color and style the binding will be similar to that of the Annual Reports. Members desiring to have the four numbers of the 1915 JOURNAL bound in one volume, will please communicate directly with The Lord Baltimore Press, Greenmount Avenue and Oliver Street, Baltimore, Md.

PROPOSED AMENDMENTS TO CONSTITUTION AND BY-LAWS.

On the recommendation of the Special Committee appointed under the resolution of the Association of September 2, 1913, reading as follows:

Resolved, That a Special Committee of five members be appointed by the President of the Association to consider and

report to the Executive Committee what amendments to the Constitution and By-laws would be desirable with a view to improving its order of business, and extending its influence in the profession and in the community at large,"

the Executive Committee has resolved to recommend to the Association certain amendments to the Constitution and By-laws. The purpose of these amendments is to make the Chairman of the General Council a member *ex-officio* of the Executive Committee; to abolish the Committee on Judicial Administration and Remedial Procedure, and the Committee on Taxation; to make the Committee to Suggest Remedies and Propose Laws Regulating Procedure a standing committee; and to provide for nomination and election of members at annual meetings by the General Council in the absence of a *majority* of the Local Council of a state.

The amendments so submitted are as follows:

OFFICERS AND COMMITTEES.

ART. III. The following officers shall be elected at each annual meeting for the year ensuing:

A President (the same person shall not be elected President two years in succession);

One Vice-President from each state;

A Secretary;

A Treasurer;

A General Council, consisting of one member from each state (the General Council shall be a standing committee on nominations for office, and shall elect its chairman annually).

There shall be an Executive Committee, which shall consist of the President, the last ex-President, the Chairman of the General Council, the Secretary and the Treasurer, all of whom shall be, *ex officio*, members, together with seven other members, to be chosen by the Association, but no member shall be eligible to such choice more than three years in succession; and the President, and in his absence the ex-President, shall be the Chairman of the committee.

There shall be one or more Assistant Secretaries, who shall be elected by the Executive Committee, and shall hold office at the pleasure of that committee.

Accounting from September 1, 1916, no person shall serve as Chairman of the General Council more than three years in succession.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each, unless otherwise indicated:

- On Jurisprudence and Law Reform;
- On Legal Education and Admissions to the Bar;
- On Commerce, Trade and Commercial Law;
- On International Law;
- On Publications;
- On Grievances;
- On Reports and Digests;
- On Patent, Trade-Mark and Copyright Law;
- On Insurance Law;
- On Professional Ethics;
- On Publicity;
- On Noteworthy Changes in Statute Law; a committee
- To Suggest Remedies and Propose Laws Regulating Procedure, to consist of not more than 15 members; a committee
- On Uniform State Laws, to consist of one member from each state; and a committee
- On Membership, to consist of such number as the President may appoint.

Amend By-law II, sub-section (f), title "Reports of Standing Committees," to read as follows:

- On Jurisprudence and Law Reform;
- On Legal Education and Admissions to the Bar;
- On Commerce, Trade and Commercial Law;
- On International Law;
- On Publications;
- On Grievances;
- On Reports and Digests;
- On Patent, Trade-Mark and Copyright Law;
- On Insurance Law;
- On Professional Ethics;
- On Publicity;
- On Noteworthy Changes in Statute Law;
- To Suggest Remedies and Propose Laws Regulating Procedure;
- On Uniform State Laws;
- On Membership.

Amend Art. IV of the Constitution, second paragraph, by striking out the word "all" after the words "in the absence

of," and substituting therefor the words "a majority of the," so that the sentence will read:

The General Council may also nominate members from states having no Local Council, and at the annual meetings of the Association, in the absence of a majority of the members of the Local Council of any state.

A minority of the Special Committee appointed in 1913 proposed other amendments which were not approved either by the Special Committee or the Executive Committee.

At the suggestion of certain officers of the Section of Legal Education, the Executive Committee has also resolved to recommend to the Association the following amendment to the By-laws, establishing a Council of Legal Education for the Section, viz.:

Amend By-law XIV (Section of Legal Education) by adding thereto the following paragraph:

There shall also be a Council of Legal Education, composed of seven members, the functions of which shall be to prepare the program of the Section of Legal Education for the ensuing meeting, and by correspondence and other practicable means to enlist and increase interest and participation in the sessions of the Section. The Chairman and the Secretary of the Section, the last two preceding ex-Chairmen thereof (being respectively members of the Association), and the Chairman of the Committee on Legal Education of the Association shall be *ex officio* members of the Council; and the Chairman of the Section, at or as soon after the annual meeting as may be, shall appoint, as the other members of the Council, a member of one of the law faculties represented in the Association of American Law Schools and a member of one of the State Boards of Bar Examiners, such appointed members to serve until the close of the annual meeting succeeding their appointment. The Chairman shall also fill vacancies in the Council.

CONFERENCE OF REPRESENTATIVES OF BAR ASSOCIATIONS.

President Root, having issued letters to various state and local Bar Associations requesting them to appoint delegates to a con-

ference in Chicago on August 28, 1916, to consider what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between the American Bar Association and such other Associations, has received expressions of cordial support from other Bar Associations, and the President reports that 47 state (including District of Columbia, Hawaii and Far Eastern American Bar Associations) and 76 local Bar Associations have thus far indicated their purpose to be represented in the conference. The indications at present are that there will be more than 200 delegates in attendance.

President Root has appointed the following representatives from the American Bar Association to the conference:

Simeon E. Baldwin, New Haven, Conn.

Alfred H. Bright, Minneapolis, Minn.

William P. Bynum, Greensboro, N. C.

T. A. Hammond, Atlanta, Ga.

John Hinkley, Baltimore, Md.

Clement Manly, Winston-Salem, N. C.

David W. Mulvane, Topeka, Kan.

George T. Page, Peoria, Ill.

Selden P. Spencer, St. Louis, Mo.

Francis Lynde Stetson, New York, N. Y.

POSTCARD RESPONSES.

The Secretary has received at this writing (June 27) cards from 1385 members signifying their intention to be present at the Chicago meeting. Postcard indications are that many of those unable to attend are detained by military service.

RECEPTION COMMITTEE.

In accordance with By-law VIII of the Constitution, the President has appointed a Reception Committee of 15 members to attend immediately before and at the opening of the first day's session of the annual meeting to receive members and delegates and introduce them to each other, with a view of making them

better acquainted and establishing a spirit of good fellowship among them. The members of the committee are as follows:

Silas H. Strawn, Illinois, *Chairman*.
Jesse A. Baldwin, Chicago, Ill.
Frederick A. Brown, Chicago, Ill.
Rome G. Brown, Minneapolis, Minn.
George T. Buckingham, Chicago, Ill.
Frederic R. Coudert, New York, N. Y.
John W. Davis, Clarksburg, W. Va.
Frederick A. Fenning, Washington, D. C.
Edward A. Harriman, New Haven, Conn.
Edward C. Kramer, East St. Louis, Ill.
Percy D. Maddin, Nashville, Tenn.
Herbert R. MacMillan, Salt Lake City, Utah.
Quincy A. Myers, Indianapolis, Ind.
Arthur M. Rutledge, Louisville, Ky.
Joseph N. Teal, Portland, Ore.

MR. JUSTICE DAY.

Hon. William R. Day, Associate Justice of the United States Supreme Court, who is now at his former home in Canton, Ohio, is greatly improved in health. He expects to attend the annual meeting of the Association, of which he has been an interested member for many years.

MARYLAND.

John Hinkley, of Baltimore, Secretary of the Association from 1893 to 1909, is the colonel in command of the Fifth Regiment, Maryland National Guard, mustered into service under the recent call of the President of the United States. Gaylord Lee Clark, of Baltimore, Assistant Secretary of the Association, is also with the colors. He is a second lieutenant in the same regiment.

CANADIAN BAR ASSOCIATION.

The Association was represented at the recent meeting of the Canadian Bar Association held in Toronto, by Henry B. J. MacFarland of the District of Columbia. Mr. MacFarland addressed the meeting on the Functions of a National Bar Associa-

tion. He was elected to honorary membership in the Canadian Bar Association.

FORMER FRENCH GUESTS.

The Secretary has received personal advices from Europe concerning several of the French lawyers who have attended meetings of the Association, viz.:

Maître Fernand Labori, the eminent advocate who attended the Montreal meeting when Bâtonnier de l'Ordre des Avocats de Paris, and responded eloquently in French at the dinner of the Association, is now at his home in Paris. He has been seriously ill. M. Labori's stepson, Adrien de Pachmann, who also attended the Montreal meeting, is serving with the army at the front.

Dr. Georges Barbey, who delivered an interesting and scholarly address on "French Family Law" at Detroit, has returned to his regiment on the western front after service on a brigade staff. M. Barbey has won the Croix de Guerre.

M. Jacques Silhol, a promising junior member of the Paris Bar, who attended the Milwaukee meeting, was killed in action on February 14, 1915, in the Pas de Calais.

GEORGE R. YOUNG.

George R. Young, of Dayton, Vice-President from Ohio of the Association, and an interested and active member thereof for nearly 30 years, died at his home on April 15, 1916. The Association was represented at the funeral by M. J. Hartley, a member of the Local Council from Ohio, under appointment by President Root.

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Proceedings of the International Trade Conference, December, 1915.

Proceedings of the Bar Association of North Dakota, 1915.

Report of the New York State Bar Association, Vol. 39, 1916.

Thirty-Eighth Annual Report of the Providence, R. I., Public Library.

Year Book, 1916, of the Association of the Bar of the City of New York.

Minutes of the New Mexico Bar Association, Twenty-ninth Annual Session, December, 1915.

Record Second Pan-American Scientific Conference.

Year Book Pan-American Society, Rules and Members.

Toward the Danger Mark—Administration of Justice in the United States (Cairoli Gigliotti).

MEETINGS OF STATE BAR ASSOCIATIONS.

THE WASHINGTON STATE BAR ASSOCIATION will meet July 27, 28, 29, 1916. The place will be determined later.

THE MONTANA BAR ASSOCIATION will meet at Missoula the latter part of July or the first part of August, 1916.

The annual meeting of the MINNESOTA STATE BAR ASSOCIATION will be held at Duluth, Tuesday, Wednesday and Thursday, August 8, 9, 10, 1916.

THE BAR ASSOCIATION OF NORTH DAKOTA will meet at Devil's Lake in the month of August, 1916.

THE STATE BAR ASSOCIATION OF WEST VIRGINIA will hold its next meeting in Bluefield, December, 1916.

The annual meeting of the MASSACHUSETTS BAR ASSOCIATION will convene during September or October of the present year.

THE OREGON BAR ASSOCIATION will hold its next annual meeting in Portland, Tuesday and Wednesday, November 21, 22, 1916.

III.
REPORTS OF COMMITTEES.

REPORT
OF THE

COMPARATIVE LAW BUREAU.

(To be presented at the meeting of the American Bar Association, at
Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The Board of Managers of the Comparative Law Bureau begs to present the following annual report as to the work and finances of the Bureau to June 1, 1916:

The work of the Bureau for the past year has been confined to the contributions of its editorial staff to the April, 1916, number of the AMERICAN BAR ASSOCIATION JOURNAL, which has taken the place of its *Annual Bulletin*, as heretofore published.

The European war has interfered with the review of legislation and jurisprudence for the principal European countries. The Bureau has, however, this year made a special point of the legislation and jurisprudence and bibliography of Latin America, in the hope that its publication for the present year may be timely in view of the general interest in Pan-American matters.

The financial statement is as follows:

INCOME.

Balance on hand June 1, 1915.....	\$77.78
Dues from members, Class B.....	75.00
Dues from members, Class C.....	143.00
Dues from Bar associations.....	135.00
Appropriation American Bar Association, on account of expense of 1914 Annual Bulletin.....	1000.00
Total	\$1430.78

EXPENDITURES.

W. W. Smithers, for expense of 1914 Bulletin.....	\$1398.34
Balance in hands of Treasurer June 1, 1915....	\$32.44

Respectfully submitted,

SIMEON E. BALDWIN, *Director*,

ROBERT P. SHICK, *Secretary*,

EUGENE C. MASSIE, *Treasurer*.

REPORT

OF THE

COMMITTEE ON COMMERCE, TRADE AND COMMERCIAL LAW.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your Committee on Commerce, Trade and Commercial Law reports as follows:

I. NATIONAL LEGISLATION ON BILLS OF LADING.

Pomerene Senate Bill on bills of lading in interstate and foreign commerce first passed the United States Senate unanimously on August 21, 1912, at the second session of the 62d Congress. It was then transmitted to the House and referred by the House to its Committee on Interstate and Foreign Commerce. It there died by reason of non-action.

Pomerene Senate Bill on bills of lading in interstate and foreign commerce unanimously passed the Senate for the second time on June 5 (calendar day, June 6th), 1914, 63d Congress, 2d session. It was transmitted to the House on June 9, 1914, and referred to the House Committee on Interstate and Foreign Commerce. It died a second time in the House Committee on Interstate and Foreign Commerce by reason of non-action.

At the first session of the 64th Congress, Senator Pomerene reintroduced his measure as Senate Bill No. 19, in which he omitted Sections 2, 3 and 10 as contained in his measure, as the same had twice previously passed the Senate. The bill as introduced by him was in the exact words of the bill (with the exception of a few clerical errors corrected by amendment), as endorsed by the American Bar Association.

On February 15, 1916, Senator Pomerene, on behalf of the Senate Committee on Interstate Commerce, reported said bill favorably to the United States Senate, being Report No. 149, 64th Congress, 1st session, February 15, 1916, Calendar No. 140, a copy of which said report is hereto attached as Exhibit "A."

On March 9, 1916, the United States Senate unanimously passed said bill for a third time, and on March 10th it was received by the House of Representatives and ordered printed and referred to the House Committee on Interstate and Foreign Commerce. A copy of said bill as the same unanimously passed the Senate and as reprinted in the House appears in Vol. 40, American Bar Association Reports for the year 1915, pages 406 to 417, both inclusive.

Your committee began efforts at once to have the House Committee on Interstate and Foreign Commerce take up for consideration said Pomerene Senate Bill No. 19, and on March 28, 1916, addressed a formal letter to the Chairman and each member of the House Committee on Interstate and Foreign Commerce. The bill seemed destined to die a third time when an appeal was made to the President of the United States. The President agreed to receive a delegation to be called together by your committee on April 12, 1916. The correspondence had with the Chairman and members of the House Committee on Interstate Commerce together with a letter of transmittal to the President were printed in a volume of 68 pages and handed to the President on that occasion.

Preliminary to visiting the President, a conference was held at the New Willard Hotel, April 12, 1916, under the auspices of your committee. Those who attended called on the President in a body. The conference consisted of representatives of more than 500,000 commercial and 375,000 agricultural interests.

Those who called on the President then proceeded to the House of Representatives and interviewed the Chairman of the House Committee on Interstate and Foreign Commerce in order to secure an early hearing. This resulted in a failure and the Chairman of the House Committee left with indefinite promises as to the future. Those who attended then became so insistent for a further interview with the Chairman of the House Committee that same was granted. After this second interview with the Chairman of the House Committee, he promised to get the House Committee together on April 13, which he did. On said day and upon a number of other days since arguments have been had for and against the bill and for and against amendments to said bill.

Your committee, on April 25, 1916, presented to the House Committee an elaborate printed brief of 120 pages explaining the bill, and since that date two printed memoranda of suggestions.

The main points of difference have centered about the provisions of Section 21 as to "shippers load and count" where goods are loaded by the shipper.

At the present date (June 9, 1916) the prospects seem good for the bill being reported out favorably by the House Committee with a few amendments. Your committee will make a supplemental report at the time of the meeting of the American Bar Association, to which this report will be submitted.

II. CODIFICATION OF THE LAW OF COMMON CARRIERS IN INTERSTATE AND FOREIGN COMMERCE.

The American Bar Association at its last meeting (on the recommendation of your committee) adopted resolutions as follows:

"(a) To authorize the Executive Committee of the American Bar Association, in its discretion, to appropriate a sufficient sum of money to enable the Committee on Commercial Law to employ a draftsman to prepare a tentative draft of a bill as hereinafter described;

"(b) That if the Executive Committee shall appropriate said money, said Committee on Commercial Law shall be authorized to employ a draftsman to prepare a tentative draft of a bill codifying the law covering the reciprocal rights, duties and obligations of common carriers and shippers in interstate and foreign commerce;

"(c) That if said Committee on Commercial Law shall employ such draftsman, said tentative draft of said bill shall be prepared under the supervision and direction of and subject to the revision of said committee; and

"(d) That when said tentative draft of said bill shall have been revised by said committee, said committee shall submit same at some future meeting of the American Bar Association for its consideration and action."

Your committee has given much thought, time and attention to these resolutions. The importance of the subject involved and the practical difficulties in carrying same out have impressed themselves upon your committee. Before taking the same up

with the Executive Committee your committee deemed it wise to first consider the selection of a draftsman and his probable compensation. Your committee had in view Prof. Joseph H. Beale, of the Harvard Law School, but he was compelled to decline consideration thereof because of other important work in which he is engaged.

Your committee is unable to make any definite or final report at this time on this subject and asks to be given further time for its consideration.

III. UNIFICATION OF REGULATIONS PERTAINING TO BOTH INTERSTATE COMMERCE AND INTRASTATE COMMERCE BY ONE CENTRAL FEDERAL COMMISSION.

At the present time the regulation of carriers engaged in interstate commerce is committed to the Interstate Commerce Commission and the regulation of carriers engaged in intrastate commerce to various state commissions.

Rates, rules, regulations and practices of intrastate carriers are so interrelated to rates, rules, regulations and practices of interstate carriers that many believe the cause of substantial and remedial justice would be better subserved by vesting the whole subject, both interstate and intrastate, in one central federal commission such as the Interstate Commerce Commission.

In *The Minnesota Rate Cases*, 230 U. S. 352, decided June 9, 1913, Mr. Justice Hughes said (at pp. 432-433):

"The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. It is urged that the same right-of-way, terminals, rails, bridges and stations are provided for both classes of traffic; that the proportion of each sort of business varies from year to year, and, indeed, from day to day; that no division of the plant, no apportionment of it between interstate and local traffic, can be made today which will hold tomorrow; that terminals, facilities and connections in one state aid the carrier's entire business and are an element of value with respect to the whole property and the business in other states; that securities are issued against the entire line of the carrier and cannot be divided by states; that tariffs should be made with a view to all the traffic of the road and should be fair as between through and short-haul business; and that, in substance, no regulation of rates can be just which does not take into consideration the

whole field of the carrier's operations, irrespective of state lines. The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.

"But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments, the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, in the absence of federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy, until its authority is limited through the exertion by Congress of its paramount constitutional power."

In *Houston & Texas Railway vs. United States*, 234 U. S. 342, decided June 8, 1914, Mr. Justice Hughes said (at pp. 350-352):

"It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation.' By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. *Gibbons vs. Ogden*, 9 Wheat. 1, 196, 224; *Brown vs. Maryland*, 12 Wheat. 419, 446; *County of Mobile vs. Kimball*, 102 U. S. 691, 696, 697; *Smith vs. Alabama*, 124 U. S. 45,

473; Second Employers' Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

"Congress is empowered to regulate, that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (County of Mobile vs. Kimball, *supra*); 'to foster, protect, control, and restrain' (Second Employers' Liability Cases, *supra*). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field."

Mr. Justice Hughes further said (pp. 353-354):

"We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of

the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a state may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

"It is also to be noted—as the government has well said in its argument in support of the commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the state cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by federal authority."

Mr. Justice Hughes also said (at pp. 359-360):

"We are not unmindful of the gravity of the question that is presented when state and federal views conflict. But it was recognized at the beginning that the nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control."

Since the announcement of the two foregoing decisions there has been much said and written on the question whether Congress should or should not be vested with the regulation of both interstate and intrastate carriers and of the rates, rules, regulations and practices of both interstate and intrastate carriers through one central body such as the Interstate Commerce Commission.

Your committee recommends that it be authorized to submit at a later date a full report on this question.

IV. FEDERAL TRADE COMMISSION.

Congress created a Federal Trade Commission on September 26, 1914 (38 United States Statutes at Large, pp. 714-724).

A clamor arose from the business interests that the Federal Trade Commission should officially inform the public of its interpretations and applications of the law from time to time. The Interstate Commerce Commission had set a wise precedent in this respect by issuing conference rulings from time to time and holding *ex parte* hearings. To the gratification of the

business world the Federal Trade Commission has followed the example set by the Interstate Commerce Commission and on January 31, 1916, issued Conference Rulings Bulletin No. 1 containing 40 conference rulings. The nature of said conference rulings is shown by the explanatory note thereto, a copy of which is hereto attached as Exhibit "B."

On March 15, 1916, the Federal Trade Commission issued Conference Ruling No. 41.

On April 7, 1916, the Federal Trade Commission issued Conference Rulings Nos. 42, 43, 44, 45, 46 and 47.

Your committee is watching closely the practical administration of rights and rectification of wrongs by this new tribunal of justice under what might well be termed the "new jurisprudence" now being administered by various federal and state commissions. It might be well for the Federal Trade Commission to conduct *ex parte* hearings and render opinions thereon as is now done by the Interstate Commerce Commission. Your committee has no specific recommendations to make at this time in this or any other respect, but wishes to add its commendation of the action of the Federal Trade Commission in issuing conference rulings from time to time.

V. BANKRUPTCY.

(a) *Sims H. R. 3101*. On December 7, 1915, Mr. Sims introduced at the first session of the 64th Congress House Bill No. 3101 to repeal the Bankruptcy Act. A copy of said bill is hereto attached as Exhibit "C." Consistent with the settled policy of the American Bar Association this bill should be defeated.

(b) *Blackmon H. R. 3595*. On December 10, 1915, Mr. Blackmon introduced at the first session of the 64th Congress House Bill No. 3595 to repeal the Bankruptcy Act. A copy of said bill is hereto attached as Exhibit "D." Consistent with the settled policy of the American Bar Association this bill should be defeated.

(c) *Edwards H. R. 3608*. On December 10, 1915, Mr. Edwards introduced at the first session of the 64th Congress House Bill No. 3608 to repeal the Bankruptcy Act. A copy of said bill is hereto attached as Exhibit "E." Consistent with the set-

tled policy of the American Bar Association this bill should be defeated.

(d) *Tribble H. R. 7538*. On January 5, 1916, Mr. Tribble introduced at the first session of the 64th Congress House Bill No. 7538 to repeal the Bankruptcy Act. A copy of said bill is hereto attached as Exhibit "F." Consistent with the settled policy of the American Bar Association this bill should be defeated.

(e) *Godwin H. R. 11871*. On February 19, 1916, Mr. Godwin introduced at the first session of the 64th Congress House Bill No. 11871 to repeal the Bankruptcy Act. A copy of said bill is hereto attached as Exhibit "G." Consistent with the settled policy of the American Bar Association this bill should be defeated.

(f) *Danforth H. R. 12195*. On February 24, 1916, Mr. Danforth introduced at the first session of the 64th Congress House Bill No. 12195 to amend Sec. 17 of the Bankruptcy Act as amended. A copy of said bill as reported out March 6, 1915, is hereto attached as Exhibit "H."

The report of the House Committee on the judiciary made March 6, 1916, as House Report No. 299, 64th Congress, first session, is hereto attached as Exhibit "I."

The purpose of the foregoing amendment is to prevent the discharge of a bankrupt from a liability incurred for "breach of promise of marriage accompanied by seduction."

The foregoing bill passed the House and was sent to the Senate. The Senate has referred said bill to the Senate Committee on the Judiciary.

Your committee believes the amendment is a wise one and therefore recommends the passage of said bill.

VI. SUMMARY OF RECOMMENDATIONS.

In conclusion, your committee summarizes its recommendations at follows:

(1) That the American Bar Association pass a resolution authorizing your committee to continue its interest in the matter of the passage of Pomerene Senate Bill No. 19 on bills of lading in interstate and foreign commerce, which said measure had not become a law at the date of this report.

(2) That the American Bar Association pass a resolution giving your committee further time for a consideration of the resolutions heretofore adopted as to the codification of the law of common carriers in interstate and foreign commerce and action thereunder by your committee and the Executive Committee of the American Bar Association.

(3) That the American Bar Association pass a resolution authorizing your committee to submit a full report as to the unification of regulations of both interstate commerce and intrastate carriers and of the rates, rules, regulations and practices of both interstate and intrastate carriers by one central federal commission and the arguments on both sides of the question and the views of your committee thereon.

(4) That the American Bar Association pass a resolution directing your committee to report upon the practical administration of right and justice by the Federal Trade Commission.

(5) That the American Bar Association pass a resolution renewing its adherence to the National Bankruptcy Act, and that it is opposed to the passage of House Bills Nos. 3101, 3595, 3608, 7538 and 11871, to repeal said act and authorizing your committee to oppose the passage of said measures.

(6) That the American Bar Association pass a resolution commending the passage of Danforth House Bill No. 12195 amending the Bankruptcy Act so as to prevent the discharge in bankruptcy of a person from liability for "breach of promise of marriage accompanied by seduction."

Respectfully submitted,

FRANCIS B. JAMES,
ERNEST T. FLORANCE,
J. A. C. KENNEDY,
FITZ-HENRY SMITH, JR.,
T. SCOTT OFFUTT.

June 9, 1916.

EXHIBIT A.

CALENDAR NO. 140. 64TH CONGRESS, FIRST SESSION. SENATE
REPORT NO. 149.

BILLS OF LADING.

FEBRUARY 15, 1916.—ORDERED TO BE PRINTED.

Mr. Pomerene, from the Committee on Interstate Commerce,
submitted the following

REPORT.

[To accompany S. 19.]

The Committee on Interstate Commerce, to which was referred Senate Bill 19, reports it back to the Senate with the recommendation that it pass with the following amendments:

On page 5, line 21, strike out "nine" and insert in lieu thereof "six."

On page 9, line 14, strike out "if" and insert therefor the word "of."

On page 19, after the word "thereof," line 3, insert "or section or part thereof."

This is, in substance, the same bill passed on August 24, 1912, and again on June 5, 1914. It is the result of the labors of the Commissioners on Uniform State Laws of the American Bar Association, after repeated conferences with representatives of the American Bankers' Association, the railroad organizations and the shippers associations. It was originally prepared for the purpose of having it presented to the several state legislatures with a view to providing uniform legislation upon the subject. It has already become the law in 10 of the leading commercial states—Connecticut, Illinois, Iowa, Louisiana, Massachusetts, Maryland, Michigan, New York, Ohio and Pennsylvania.

The pending bill does not vary substantially from the acts passed by the legislatures of the states just named, save that it is made to apply to interstate and foreign commerce.

In its present form the bill was approved by the American Bar Association at its thirty-eighth annual meeting held in Salt Lake City in August, 1915.

NECESSITY FOR FEDERAL LEGISLATION.

The total exports and imports for the year 1915 amounted to \$5,329,521,248.

In the hearings before the Interstate Commerce Committee it was testified by well-informed witnesses that bills of lading were annually issued in American commerce representing consignments of merchandise valued at \$25,000,000,000; that 99 per cent of the tonnage and value of the commodities shipped and covered by these bills of lading involved interstate and foreign commerce and only 1 per cent intrastate commerce.

On these bills of lading it is estimated that \$5,000,000,000 in cash was advanced annually by the banks. It must follow, therefore, that any reasonable legislation which will lead to the security of these bills of lading in the hands of their owners or holders must be of immense value to the commerce of the country.

It affects the business of 100,000,000 of people, extending into 48 states of the Union and to all the nations of the world.

In 1889, the United States Supreme Court, in *Friedlander vs. Texas & Pacific Railroad* (139 U. S., 416) held:

"A bill of lading fraudulently issued by the station agent of a railroad company, without receiving the goods named in it for transportation but in other respects according to the customary course of business, imposes no liability upon the company to an innocent holder who receives it without knowledge or notice of the fraud and for a valuable consideration."

Under the agreed statement of facts in the case just cited, it appears that the bill of lading issued November 6, 1883, was executed by one Easton, the agent of the railroad company, fraudulently and in collusion with one Lahnestein, and without receiving any of the cotton called for by the bill of lading, and without any expectation of receiving it on the part of Easton. A conspiracy had been entered into between Easton and Lahnestein to issue these bills of lading for Lahnestein's benefit. They had been guilty of similar transactions.

The court held that under these circumstances, the agent was acting beyond the scope of his authority, and therefore the railroad company was not bound.

Whether this decision was sound or not it was based upon precedents, and ever since has been recognized as the law of the land by the federal courts as well as by some of the state courts. This ruling has resulted in great losses to the buyers of merchandise who have the right to depend upon the *bona fides* of bills of lading, to bankers and financial men who have bought or discounted drafts secured by these bills of lading, and to sellers and buyers of cotton, grain, or other merchandise whose transactions are discredited by reason of the frauds which have been perpetrated by fraudulent shippers conspiring with freight agents. As a result millions of dollars have been lost to commerce.

The pending bill, Sec. 22, modifies the law as laid down in the Friedlander case, by declaring:

"That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee, the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to (a) the consignee named in a straight bill, or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue."

The committee will not take the time to discuss all of the features of the bill, but among the most important, they desire to call attention to the following:

1. Duplicate bills of lading.
2. Altered bills of lading.
3. Spent bills of lading.
4. Shipper's load and count.
5. Forgeries.

DUPLICATE BILLS OF LADING.

The proposed regulations with regard to duplicate bills of lading are found in Secs. 4 and 5 and 15, which read as follows:

"Sec. 4. That order bills issued in a state for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even

though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however*, that nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

"Sec. 5. That when more than one order bill is issued in a state for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word 'duplicate' or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however*, that nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, be interpreted or construed so as to require the placing of the word 'duplicate' thereon, or to impose the liabilities set forth in this section for failure so to do.

"Sec. 15. That a bill, upon the face of which the word 'duplicate' or some other word or words indicating that the document is not an original bill is placed, plainly, shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability."

ALTERED BILLS OF LADING.

Sec. 13 provides:

"That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor."

SPENT BILLS OF LADING.

Many frauds have been committed in the commercial world by using bills of lading after the goods have been delivered, and which have not been taken up or canceled. Frequently they have been used for the purpose of securing credit, although the goods called for have been delivered. The railroads have not

been liable because they have been able to prove the delivery of the goods. Secs. 11 and 12 of the bill remedy these abuses. They read as follows:

"Sec. 11. That except as provided in Sec. 29, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiations of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

"Sec. 12. That except as provided in Sec. 26, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto."

SHIPPER'S LOAD AND COUNT.

Many abuses have arisen by carriers marking bills of lading "Shipper's load and count." This of course affects their value for banking and credit purposes. These abuses are sought to be remedied by Secs. 20 and 21 of the bill, which provide:

"Sec. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, 'Shipper's weight, load, and count,' or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Sec. 21. That when goods are loaded by a shipper at a place where the carrier maintains an agency, such carrier shall, on written request of such shipper, and when given a reasonable opportunity by the shipper so to do, count the packages of goods if package freight, and ascertain the kind and quantity if bulk freight, within a reasonable time after such written request, and such carrier shall not, in such cases, insert in the bill of lading, or in any notice, receipt, contract, rule, regulation, or tariff, 'Shipper's weight, load, and count,' or other words of like purport indicating that the goods were loaded by the shipper and the description of them made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein."

FORGED BILLS OF LADING.

While the laws of the several states penalize the forging of bills of lading, it is believed, because of the fact that approximately 99 per cent of our commerce is interstate or foreign in character, there should be some federal legislation making the forging and issuing of forged bills of lading punishable by federal courts. This is done by Sec. 41 of the pending bill, which is as follows:

"That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding \$5,000, or both."

It is not intended by this report to call special attention to all the provisions of the bill. They are self-explanatory. Suffice it to say that in addition to the correction of the abuses hereinbefore specially referred to, the bill is a codification of the law and principles now controlling, and which ought to control, inter-

state and foreign shipments. It defines the right and liabilities of the common carriers, consignors, consignees, and all other immediate owners or holders of bills of lading. If adopted, it will serve to make more uniform the commercial law of our country.

CONSTITUTIONALITY OF THE PENDING BILL.

Some doubt has been expressed as to the constitutionality of those provisions of the bill relating to the transfer or negotiation of bills of lading. A brief discussion of this question is therefore opportune:

The Constitution vests Congress with power "to regulate commerce with foreign nations and among the several states and with the Indian tribes." This authority is very broad, very comprehensive. It covers all phases and features of interstate commerce. It touches not only the property of the railroad, but all of its instrumentalities. It controls and protects its operation and its business. The shipment of goods from one state to another is surely interstate commerce. If so, when it comes to the physical property itself, can there be any doubt that the same power extends to all of the instrumentalities used in the conveyance of the property, or to any contract which may pertain to it for the safeguarding of the parties interested? If the goods which are shipped from one state to another be interstate commerce, are we going far afield when we say that the bill of lading, which is the symbolic representative of the goods, is also interstate commerce?

The committee will not take the time to discuss all of the decisions of our Supreme Court bearing upon this subject. We shall only refer to a few of them:

In 1911 the Supreme Court had before it the case of the *Southern Railway Co. vs. the United States*. The statute involved was what is commonly known as the "Safety Appliance Act" of March 2, 1893, as amended March 2, 1903. Its regulatory features applied to all locomotives, cars and similar vehicles used on any railway that is a highway of interstate commerce, and were not confined exclusively to vehicles engaged in such commerce.

In the syllabus of the case, 222 U. S., 20, the court says:

"The power of Congress under the commerce clause of the Constitution is plenary and competent to protect persons and property moving in interstate commerce from all danger, no matter what the source may be; to that end, Congress may require all vehicles moving on highways of interstate commerce to be so equipped as to avoid danger to persons and property moving in interstate commerce.

"It is of common knowledge that interstate and intrastate commerce are commingled in transportation over highways of interstate commerce, that trains and cars on the same railroad, whether engaged in one form of traffic or the other, are interdependent and that absence of safety appliances from any part of a train is a menace not only to that train but to others."

Mr. Justice Van De Vanter, in delivering the opinion of the court, on page 26, says:

"We come then to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is: Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way. Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce."

In the same report, on page 370, Mr. Chief Justice White handed down the opinion of the Supreme Court in *Northern Pacific Ry. vs. State of Washington*. The case involved the validity of the act of Congress known as the "Hours of Service Law," passed March 4, 1907.

In the syllabus the court says:

"A train moving and carrying freight between two points in the same state, but which is hauling freight between points one of which is within and the other without the state, or hauling it through the state between points both without the state, is engaged in interstate commerce and subject to the laws of Congress enacted in regard thereto."

On page 377, the court quotes approvingly the language of the Supreme Court of the State of Washington, as follows:

"The power of Congress to regulate commerce is plenary, and that, as an incident to this power, the Congress may regulate by legislation the instrumentalities engaged in the business, and may prescribe the number of consecutive hours an employee of a carrier so engaged shall be required to remain on duty; and that when it does legislate upon the subject, its act supersedes any and all state legislation on that particular subject."

The court cites in support of this doctrine a number of its former decisions. In fact, this proposition is not regarded by the courts as debatable.

In *Illinois Central R. R. Co. vs. Behrens*, administrator (233 U. S., p. 473), the court said:

"When a railroad is a highway of both interstate and intrastate commerce, and the two classes of traffic are interdependent in point of both movement and safety, Congress may, under the power committed to it by the commerce clause of the Constitution, regulate the liability of the carrier for injuries suffered by an employee engaged in general work pertaining to both classes of commerce, whether the particular service performed at the time, isolatedly considered, is in interstate or intrastate commerce."

In *St. Louis, Iron Mountain & Southern Railway Company vs. Edwards* (227 U. S., 265), the Supreme Court held that—

"As applied to interstate shipments, the state cannot impose penalties for delay in delivery to consignee, as Congress has acted on that subject by the passage of the Hepburn Act."

In *Adams Express Co. vs. Croninger* (226 U. S., 491), Mr. Justice Lurton, at page 500, says:

"That the constitutional power of Congress to regulate commerce among the states and with foreign nations comprehends power to regulate contracts between the shipper and the carrier of an interstate shipment by defining the liability of the carrier for loss, delay, injury, or damage to such property needs neither argument nor citation of authority.

"That the legislation (of Congress) supersedes all the regulations and policies of a particular state upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation, or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulation with reference to it. Only the silence of Congress authorized the exercise of the police power of the state upon the subject of such contracts. But when Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the state ceased to exist."

In *Houston & Texas Ry. vs. United States* (234 U. S., 343), the language of the syllabus, in part, is:

"The object of the commerce clause was to prevent interstate trade from being destroyed or impeded by the rivalries of local governments; and it is the essence of the complete and paramount power confided to Congress to regulate interstate commerce that wherever it exists it dominates.

"Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule; otherwise the nation would not be supreme within the national field.

"While Congress does not possess authority to regulate the internal commerce of a state, as such, it does possess power to foster and protect interstate commerce, although in taking necessary measures so to do it may be necessary to control intrastate transactions of interstate carriers.

"The use of the state of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on any part of that commerce is a ground for federal intervention, nor can a state authorize a carrier to do that which Congress may forbid and has forbidden."

Again in *Chicago, R. I. & Pac. Ry. vs. Hardwick Elevator Co.* (226 U. S., 427), it was held that—

"There can be no divided authority over interstate commerce, and regulations of Congress on that subject are supreme.

"As to those subjects upon which the states may act in the absence of legislation by Congress, the power of the state ceases the moment Congress exerts its paramount authority thereover."

Now let us apply the doctrine of these cases to the bill under consideration. They show conclusively that if Congress passes this bill, it will supersede any and all state legislation upon the subject.

It is urged by those who oppose this bill that if goods be sent from New York to Cleveland and the bill of lading is indorsed and transferred by one citizen of Cleveland to another citizen of Cleveland, within the State of Ohio, it is an intrastate transaction and cannot be controlled by Congress. As applied to an ordinary contract, if there were no other facts involved, this position would be correct. But we answer, the lines of shipment are interstate lines; the trains carrying the goods from one state to another are "instrumentalities" employed in interstate commerce, the shipment of the goods from one state to another is interstate commerce, and in order to define the rights and liabilities of the carrier, the consignor, consignee and immediate owners, both law and public policy require that the company shall issue bills of lading.

Can it be said that the bill of lading, which is the representative of this interstate business, defining the rights and liabilities of all concerned, is not a contract relating to interstate commerce, and therefore not controlled by its principles?

Those who object to the bill admit that interstate shipments are subject to federal control, save only where it relates to a transfer of the bill of lading within a state between citizens of that state. If Congress assumes control of this legislation affecting interstate commerce, must it continue to divide its authority with the state when it comes to the mere negotiation and transfer of the bill of lading between two citizens of the same state within the state, but under all other circumstances the state shall have no control? If such be the case, what becomes of the doctrine that the power of Congress is plenary after it

has once assumed to legislate upon a given subject? If so, would the federal law supersede state legislation?

If Congress has the power to compel safety appliances to be placed on cars used both in interstate and intrastate transportation over interstate highways in order to insure the safety of interstate traffic, as was held in *Southern Railway vs. United States*, above cited; if it has power to prescribe the number of consecutive hours of service of a crew moving a train from one point to another in the State of Washington, hauling merchandise from points within the state to points without the state, as well as in carrying merchandise through the state from a point without the state to a foreign destination, in view of the unity and indivisibility of the service of the train crew and the paramount character of the authority of Congress to regulate commerce, as was held in *Northern Pacific Railway vs. State of Washington*, above cited; if Congress has the power to regulate the carrier's liability for injuries to an employee occurring upon a highway of both interstate and intrastate commerce where the two kinds of traffic are interdependent in point of movement and safety and where the injuries were suffered while the employee was engaged in general work pertaining to both classes of commerce, whether the particular service performed at the time isolatedly considered is interstate or intrastate commerce, as was held in *Illinois Central Railroad Co. vs. Behrens*, administrator, above cited; if the state cannot impose penalties for delay and delivery to a consignee because Congress has acted upon that subject by the passage of the Hepburn Act, as was held in *St. Louis, etc., Railway vs. Edwards*, above cited; and if when Congress acts in such a way as to manifest its purpose to exercise its conceded authority, the regulatory power of the state ceases to exist, as was held in *Adams Express Co. vs. Croninger*, above cited, are we going far afield when we conclude that if Congress decides to regulate a bill of lading from the time it is issued until it is spent it supersedes the authority of the state to control such bill in its transfer from one citizen of a state to another citizen within that state?

Paraphrasing the language of Mr. Justice Van Devanter, may not this power of federal control be exerted to secure the safety

of the property transported therein, no matter what may be the source of the danger which threatens, whether it be by transfer or negotiation between two parties residing in different states, or in the same state? Can we not say, again borrowing the thought of the learned justice, that it is no objection that the dangers intended to be avoided arise in whole or in part out of matters connected with intrastate commerce?

Would it not be hypercritical to say that the bill of lading thus relating to interstate shipments is valid and binding on all parties concerned from the day it is issued to the day it is spent, and subject to the control of Congress at all times save only when it is transferred or negotiated by or between two citizens of a state within the same state? Is it sound to say the federal law can regulate its issuance and operation before it is thus transferred or negotiated between two citizens of the same state, and resume its jurisdiction immediately after it is thus transferred or negotiated between them, provided the subsequent transfers or negotiations shall be between citizens of different states? Must Congress, after it has assumed jurisdiction, surrender it for a moment of time to the state authorities only to resume it again after a certain contingency? If so, what becomes of the doctrine of our Supreme Court that when Congress does legislate upon a subject its act supersedes any and all state legislation on that particular subject?

A careful study of these decisions of our Supreme Court forces the conclusion that the constitutional objections raised are not sound.

EXHIBIT B.

[FROM FEDERAL TRADE COMMISSION CONFERENCE RULINGS
BULLETIN No. 1.]

EXPLANATORY NOTE.

The following are rulings of the commission in conference which are published as being of public interest. Future rulings will be announced from time to time through the public press

and subsequently compiled and issued by the commission in successive bulletins. These rulings are published for the information of business men engaged in interstate commerce and others interested in the work of the commission. They are not decisions in formal proceedings, but merely expressions of the opinion of the commission on applications for the issuance of complaints and informal inquiries with regard to particular facts which involve the interpretation and construction of the Federal Trade Commission Act and of those sections of the Clayton Act with the enforcement of which the commission is charged.

While these rulings may be regarded as precedents in so far as they are applicable in proceedings before the commission, a more extensive presentation of facts in later cases may result in their modification, and they should not, therefore, be regarded as conclusive in the determination by the commission of any future action.

Copies may be obtained by those interested on application to the secretary of the commission.

January 13, 1916.

EXHIBIT C.

64TH CONGRESS, 1ST SESSION. H. R. 3101.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 7, 1915.

Mr. Sims introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO REPEAL AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES, APPROVED JULY FIRST, EIGHTEEN HUNDRED AND NINETY-EIGHT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the

act approved July first, eighteen hundred and ninety-eight, entitled "An act to establish a uniform system of bankruptcy throughout the United States," be, and is hereby, repealed: *Provided*, That nothing herein shall in any way affect proceedings under said act begun prior to the time this act takes effect.

EXHIBIT D.

64TH CONGRESS, 1ST SESSION. H. R. 3595.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 10, 1915.

Mr. Blackmon introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO REPEAL AN ACT TO ESTABLISH A UNIFORM SYSTEM OF
BANKRUPTCY AND ALL AMENDMENTS THERETO.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act to establish a uniform system of bankruptcy throughout the United States approved July first, nineteen hundred and eight, and all amendments thereto, including the amendatory act of February fifth, nineteen hundred and three, and the amendatory act of June twenty-fifth, nineteen hundred and ten, be, and the same are hereby, repealed.

SEC. 2. That all laws and parts of laws in conflict herewith are hereby in all things repealed.

EXHIBIT E.

64TH CONGRESS, 1ST SESSION. H. R. 3608.

IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 10, 1915.

Mr. Edwards introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO REPEAL AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES, APPROVED JULY FIRST, EIGHTEEN HUNDRED AND NINETY-EIGHT, AND ALL AMENDMENTS THERETO.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved July first, eighteen hundred and ninety-eight, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and all amendments thereto, be, and the same are hereby, repealed: Provided, That no proceedings under said bankruptcy act begun prior to the passage hereof shall be affected by this act.

EXHIBIT F.

64TH CONGRESS, 1ST SESSION. H. R. 7538.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 5, 1916.

Mr. Tribble introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO REPEAL AN ACT ENTITLED "AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES," APPROVED JULY FIRST, EIGHTEEN HUNDRED AND NINETY-EIGHT, AND AMENDMENTS APPROVED FEBRUARY FIFTH, NINETEEN HUNDRED AND THREE, AND JUNE FIFTEENTH, NINETEEN HUNDRED AND SIX.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to establish a uniform system of bankruptcy

throughout the United States," approved July first, eighteen hundred and ninety-eight, and amendments thereto, approved February fifth, nineteen hundred and three, and June fifteenth, nineteen hundred and six, be, and the same are hereby, repealed.

EXHIBIT G.

64TH CONGRESS, 1ST SESSION. H. R. 11871.

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 19, 1916.

Mr. Godwin of North Carolina introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO REPEAL AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES, APPROVED JULY FIRST, EIGHTEEN HUNDRED AND NINETY-EIGHT, AND ALL AMENDMENTS THERETO.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved July first, eighteen hundred and ninety-eight entitled "An act to establish a uniform system of bankruptcy throughout the United States," and all amendments thereto, be, and the same are hereby, repealed: Provided, That no proceedings under said bankruptcy act begun prior to the passage hereof shall be affected by this act.

EXHIBIT H.

64TH CONGRESS, 1ST SESSION. H. R. 12195.

[Report No. 299.]

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 24, 1916.

Mr. Danforth introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed.

MARCH 6, 1916.

Referred to the House Calendar and ordered to be printed.

A BILL

TO AMEND SECTION SEVENTEEN OF THE UNITED STATES BANKRUPTCY LAW OF JULY FIRST, EIGHTEEN HUNDRED AND NINETY-EIGHT, AND AMENDMENTS THERETO OF FEBRUARY FIFTH, NINETEEN HUNDRED AND THREE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section seventeen of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, as amended February fifth, nineteen hundred and three, be amended so as hereafter to read as follows:

"Sec. 17. *Debts not affected by a discharge.*—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (third) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowl-

edge of the proceedings in bankruptcy; or (fourth) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity."

EXHIBIT I.

HOUSE OF REPRESENTATIVES. 64TH CONGRESS, FIRST SESSION.
REPORT No. 299.

AMEND SECTION 17 OF BANKRUPTCY LAW.

MARCH 6, 1916.—REFERRED TO THE HOUSE CALENDAR AND
ORDERED TO BE PRINTED.

Mr. Danforth, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 12195.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 12195) to amend Sec. 17 of the United States Bankruptcy Law of July 1, 1898, and amendments thereto of February 5, 1903, after due consideration thereof recommends that the bill do pass.

This bill amends Sec. 17 of the Bankruptcy Act so that it shall read as follows:

"Sec. 17. *Debts not affected by a discharge.*—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (third) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (fourth) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity."

The only amendment sought by this bill is the addition of the words "or for breach of promise of marriage accompanied by seduction," the purpose of this amendment being to avoid a discharge of a judgment for damages in an action for breach of promise where seduction has been pleaded and proved in aggravation of damages. Such an action is based on the breach of the contract and the seduction is provable as aggravation of damages only. In states where the common law prevails the injured maiden has no cause of action for the seduction, as the action for that cause must be brought by a guardian or master of the maiden. It has come to the attention of the committee that in such states where additional damages were undoubtedly allowed in an action for breach of promise of marriage where the seduction was proved it was held that a discharge in bankruptcy released the bankrupt from the judgment. To avoid this injustice this amendment is recommended.

REPORT

OF THE

COMMITTEE ON GOVERNMENT LIENS ON REAL ESTATE.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your special committee on Government Liens on Real Estate begs leave to report that the only matter before your committee is that of providing a method for the removal and disposition of government liens from real estate after such a lien has attached.

At the last meeting of the Association, your committee was instructed to cause to be presented to the 64th Congress the bill for that purpose, which was approved by this Association at its annual meeting in 1914. Your committee now reports that the bill mentioned was introduced in the House of Representatives, January 10, 1916, by Congressman John A. Sterling of Illinois, and is now pending before the Committee on the Judiciary as H. R. 8476. Mr. Sterling has been very tireless in his efforts to obtain a favorable report on the bill, but up to the time of the preparation of this report it is still in the hands of the Committee on the Judiciary of the House of Representatives. Some objection has been made to the bill by the attorney-general, but Mr. Sterling informs your committee that the objections of the attorney-general have been met by a slight amendment to the bill and he hopes it will soon be reported by the committee and passed by the House.

Your committee therefore recommends that the matter be referred to a like committee to be appointed by the next President of the Association, with instructions to continue its efforts to secure the passage of the bill.

JOHN T. RICHARDS,
FRANCIS LYNDE STETSON,
JOSEPH M. STAYTON.

REPORT

OF THE

COMMITTEE ON INSURANCE LAW.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The Committee on Insurance Law was directed by the Association, at the meeting of 1913, to cooperate with the Senate and House Committees of Congress on the District of Columbia, in formulating a model insurance code for the District of Columbia, with a view that such code, when approved by the Association and enacted into law by Congress, might be adopted by the several states.

The committee thereupon began the work of preparing the proposed code of laws regulating insurance, and after several meetings a draft of the proposed law was made and printed and widely circulated among lawyers and others interested in the subject.

At the 1914 meeting of the Association the committee reported that it had not completed its work, and the Association instructed the committee to continue in the preparation of the proposed code.

And again, at the 1915 meeting of the Association, the committee reported that it was not ready to report the proposed bill, and the committee was then directed to continue the work of preparing the proposed model code for the regulation of insurance in the District of Columbia, and instructed to report the same, when it was completed by the committee, to the Association and to the Senate and House Committees on the District of Columbia. Meantime a second amended draft of the proposed code was printed and circulated. The committee has had many meetings and discussions on the many provisions of the proposed code, and has heard the criticisms and suggestions of many persons.

The committee has completed to its satisfaction most of the provisions of the proposed code, but the provisions regulating

mutual fire insurance and those regulating interinsurance and some other provisions have not been completed. At this date of making this report, the committee is not ready to report a completed bill for the consideration of the Association.

A further meeting of the committee will be held before the meeting of the Association, at which meeting the proposed bill may be completed. But if the committee should be able to complete the bill to its satisfaction, by the time of the 1916 meeting of the Association, still it is considered that the bill should not then be recommended to the Association, but that it should be published and that another year should elapse for criticisms and suggestions, before the bill shall be recommended to the Association for its approval.

Therefore, it is recommended that this committee be authorized to continue the work of preparing the proposed model code for the regulation of insurance in the District of Columbia, and instructed to report the proposed code, when it is completed by the committee, to the Association and to the Senate and House Committees on the District of Columbia.

ARTHUR I. VORYS,
CHARLES W. FARNHAM,
ASHLEY COCKRILL,
ARCHIBALD G. THACHER,
U. S. G. CHERRY.

June 16, 1916.

REPORT

OF THE

COMMITTEE ON INTERNATIONAL LAW.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your standing Committee on International Law respectfully submits its annual report.

The international incidents affecting the United States have, in conjunction with the European war and the disorders in our neighboring Republic of Mexico, increased greatly in numbers and in importance. Repeatedly the country has seemed upon the brink of severing diplomatic relations if not proceeding to a declaration of war.

Fortunately recourse to these extreme measures has not been found necessary.

Your committee expresses its earnest hope that the efforts of the United States Government to maintain in full force the pre-existing rules of international law for the protection of the rights of non-combatants and of the persons and the property of neutrals upon the high seas may be crowned with success, and that these rights, so important for the welfare of mankind, may remain assured and unabridged. It welcomes the responsible utterances of all parties to the great European war recognizing and acknowledging such rights, and congratulates our government on having obtained such definite declarations.

Your committee further respectfully submits that the duty of maintaining neutral rights falls of necessity primarily upon this the greatest of the neutral powers.

That its efforts to maintain and enforce the humanizing restraints imposed upon all belligerents by international law ought not to be abandoned or in any way remitted.

Your committee is newly impressed with the greatly increased importance of our international relations which now occupy the attention and involve the vital interests of all classes of our people. Its members would urge upon the gentlemen of the Bar,

who are the custodians, expounders and defenders of all law, both municipal and international, that the rules of international justice and humanity established by custom or agreement ought not to be omitted in the requirements for legal degrees or for admission to practise at the Bar. They therefore respectfully recommend that reasonable and competent acquaintance with international law should be assured by making instruction therein a required part of the courses in our schools of law and by including the law of nations as a required topic in examinations for admission to the Bar.

These recommendations are made with reference not solely to the lawyer as a practitioner but with reference also to his large and often controlling part in shaping a just public opinion and national policy.

In accordance with the practice of many years your committee has tabulated and enumerates chronologically the treaties or agreements negotiated, confirmed or proclaimed by the United States and the more important diplomatic communications made or received by it and international incidents by which it is directly affected, and submits the same.

TABLE OF EVENTS.

1915.

June 9. The United States addressed a note to Germany on the sinking of the *Falaba*, the *Gulflight*, the *Cushing* and the *Lusitania*. She asserted the right of neutrals to travel on the high seas, that the *Lusitania* was unarmed, and expressed a hope that an agreement might be reached by which the rights of Americans would be safeguarded.

Text in official document, special supplement, *American Journal of International Law*, July, 1915, and see *American Journal of International Law*, July, 1915, p. 728.

June 24. The United States by note to Germany asked a reconsideration of the latter's refusal to settle by diplomacy instead of in a prize court the claim of the captain and the owners of the American ship *William P. Frye*, claiming, as Germany had admitted liability under the treaty of 1828

for sinking the ship, the prize court's adjudication was unnecessary and not binding on the United States.

American Journal of International Law, July, 1915,
p. 729.

- June 28. The British steamer *Armenian*, with a cargo of mules from the United States, was torpedoed by a submarine off the coast of Cornwall, England. Twenty-six of the crew lost their lives. Most of them were Americans.

American Journal of International Law, October, 1915,
p. 966.

New York Times, June 29, 1915.

- June 28. General Victoriano Huerta and General Orozco arrested by United States officers near Mexican border charged with violation of neutrality by planning a revolution in Mexico. They were released on bail. General Huerta arrested July 3 at El Paso, his bail raised to \$30,000. He declined to give bail.

American Journal of International Law, October, 1915,
p. 966.

New York Times, June 29, July 4, 1915.

- July 7. United States naval authorities take control of German-owned wireless station at Sayville, Long Island, to guarantee neutral use only.

American Journal of International Law, October, 1915,
p. 966.

New York Times, July 8, 1915.

- July 8. Germany replied to note of United States of June 10 as to submarine war on merchant vessels.

American Journal of International Law, October, 1915,
p. 966.

Text special supplement to Journal, p. 149.

- July 9. British steamer *Orduna* for New York with many American passengers attacked near Queenstown by submarine, but escaped.

American Journal of International Law, October, 1915,
p. 966.

New York Times, July 9, 1915.

- July 10. German prize court in case of the Frye adjudged the cargo contraband and the sinking justified, but held Germany must pay indemnity for ship and American cargo under Prussian-American treaties of 1785 and 1799.

American Journal of International Law, October, 1915, p. 966.

Text German note, special supplement of Journal, p. 188.

- July 12. Germany by note to United States admitted that the Nebraskan, a United States merchant ship, was torpedoed by a German submarine without warning.

American Journal of International Law, October, 1915, p. 967.

Text issued by Department of State, United States.

- July 14. The United States by note to Great Britain protested against the latter's prize courts acting under "Orders in Council," or other municipal law, not in accord with international law.

American Journal of International Law, October, 1915, p. 967.

Text in special supplement to Journal, p. 153.

- July 15. United States protested to Great Britain against the seizure of U. S. S. Neches.

American Journal of International Law, October, 1915, p. 967.

Text, special supplement to Journal, p. 154.

- July 21. United States sent a third note to Germany as to rights of neutral passengers on merchant ships.

American Journal of International Law, October, 1915, p. 967.

Text, special supplement to Journal, p. 155.

- July 23. Note received by United States from Great Britain answering note of United States of April 2, as to interference with trade in war zone, arguing that Great Britain's course is warranted by international law as modified by the present situation.

American Journal of International Law, October, 1915, p. 967.

Text, special supplement to Journal, p. 157.

- July 25. The American ship *Leelawnaw* was sunk by a German submarine off northwest coast of Scotland, warning was given and the crew towed to a safe place. The ship was carrying flax from Russia to Ireland. Germany had declared flax contraband.

American Journal of International Law, October, 1915,
p. 967.

New York Times, July 27, 1915.

- July 28. The President of Haiti was taken from the French legation and killed by revolutionists. The U. S. Cruiser *Washington* landed marines at Port au Prince to prevent further disorder. July 29 Rear Admiral Caperton with marines and sailors from the *Washington* assumed control of Port au Prince. Two sailors were killed in a night attack. Control was extended to Cape Haytien, August 13.

American Journal of International Law, October, 1915,
p. 967.

New York Times, July 29, August 14, 1915.

- July 29. The United States demanded of Mexican leaders that railway communication between Mexico City and Vera Cruz be reestablished for forwarding food, starvation conditions being reported at the former city.

American Journal of International Law, October, 1915,
p. 968.

New York Times, July 30, 1915.

- July 30. Germany replied to note of United States of June 24 as to sinking the *Frye*, saying that a German prize court had held the act justifiable, but promising indemnity to the owners or to submit the whole case for arbitration at the Hague.

American Journal of International Law, October, 1915,
p. 968.

Text in special supplement to Journal, p. 188.

- July 31. Great Britain answered United States note of July 16 (14) as to the rights of American citizens under the rules of international law by legal arguments supporting the practices of Great Britain.

American Journal of International Law, October, 1915,
p. 968.

Text in special supplement to Journal, p. 163.

July 31. Great Britain answered note of United States as to the Neches.

American Journal of International Law, October, 1915,
p. 968.

Text in special supplement to Journal, p. 162.

Aug. 3-6. Upon invitation of the United States the representatives of Argentina, Brazil, Chile, Bolivia, Uruguay and Guatemala met with Secretary of State, United States, to discuss the restoration of order in Mexico.

American Journal of International Law, October, 1915,
p. 968.

New York Times, August 3, 1915.

Aug. 4. The French prize court confirmed the seizure of the Dacia, transferred from German to American registry after the war had begun. The cargo of cotton was not condemned, as Great Britain had stated that cotton would not be detained, it was, however, purchased by the French Government.

American Journal of International Law, October, 1915,
p. 969.

New York Times, August 5, 17, 1915.

Text of decrees, American Journal of International
Law, October, 1915, p. 1015.

Aug. 6. Note verbale from British Embassy to United States Government, as to the Neches.

American Journal of International Law, October, 1915,
p. 969.

Text issued by Department of State.

Aug. 10. United States accepted offer of indemnity for the Frye from Germany, but proposed the alternate reference to the Hague court be merely of the question of the legality of the sinking of the ship.

American Journal of International Law, October, 1915,
p. 969.

Special supplement to Journal, p. 191.

- Aug. 11. General Carranza protested to the governments participating in the conference on Mexico and warns of the danger of interference.

American Journal of International Law, October, 1915,
p. 969.

New York Times, August 12, 1915.

- Aug. 11. An appeal was sent by the Secretary of State, United States, the ambassadors of the Argentine Republic, Brazil and Chile, the ministers from Bolivia, Guatemala and Uruguay to Mexicans having "authority and power" calling on them to settle the affairs of Mexico and suggesting a conference and truce therefor and offering friendly and disinterested help.

American Journal of International Law, October, 1915,
p. 969.

Independent 38, 256.

New York Times, Aug. 12, 13, 14, 1915.

- Aug. 12. The United States replied to the protest of Austria-Hungary against the sale of war supplies by Americans to her enemies, strongly supporting such right upon law, precedent, the practice of all countries including Germany and Austro-Hungary, and upon policy as well.

American Journal of International Law, October, 1915,
p. 969.

Text in special supplement to Journal, p. 166.

- Aug. 18. General Villa, leader of one of the chief factions in Mexico, formally accepted the good offices of the United States and other American Republics.

American Journal of International Law, October, 1915,
p. 970.

New York Times, August 19, 1915.

- Aug. 19. The British steamer Arabic sunk off the English coast with the loss of two American lives.

American Journal of International Law, October, 1915,
p. 970.

New York Times, August 20, 1915.

- Aug. 21. The British declaration signed August 20, making cotton contraband, became operative.
American Journal of International Law, October, 1915,
p. 970.
London Gazette No. 29273.
New York Times, August 22, 1915.
- Aug. 23. The United States issued a neutrality proclamation in the war between Italy and Turkey.
American Journal of International Law, January, 1916, p. 143.
Text issued by Department of State, Proclamation No. 1308.
- Sept. 1. The German Ambassador informed the Secretary of State of the United States that Germany's last note as to the Lusitania contained these words, "Liners will not be sunk by our submarines without warning and without safety of the lives of non-combatants, provided the liners do not try to escape or offer resistance," and that this was written before the sinking of the Arabic.
American Journal of International Law, October, 1915,
p. 970.
Text of note New York Times, September 2, 1915.
- Sept. 4. Rear Admiral Caperton declared martial law in portion of Haiti occupied by United States troops.
American Journal of International Law, October, 1915,
p. 970.
New York Times, September 5, 1915.
- Sept. 4. The Allan liner Hesperian torpedoed. The United States asked Germany for the facts.
American Journal of International Law, October, 1915,
p. 970.
New York Times, September 6, 1915.
- Sept. 7. Germany by note to the United States refused indemnity for sinking the Arabic but offered to submit the case to the Hague Tribunal.
American Journal of International Law, January, 1916,
p. 143.
Text issued by Department of State.
New York Times, October 6, 1915.

- Sept. 8. The United States informed Austria-Hungary that her Ambassador, Dr. Dumba, was no longer acceptable because of attempts to instigate strikes in American factories making war supplies for the allies.

American Journal of International Law, October, 1915,
p. 971.

New York Times, July 3, 4 and September 10, 29,
1915.

- Sept. 9. Germany informed the United States Ambassador that the Orduna was fired on by mistake.

American Journal of International Law, October, 1915,
p. 971.

New York Times, September 13, 14, 1915.

- Sept. 10. General Carranza rejected the peace proposals of the United States and Latin-American governments.

American Journal of International Law, October, 1915,
p. 971.

New York Times, September 11, 1915.

- Sept. 16. A treaty was signed at Port au Prince understood to provide for supervision by the United States of Haitian finances and constabulary.

American Journal of International Law, October, 1915,
p. 971.

New York Times, September 22, 1915.

- Sept. 19. Germany named Dr. Kepny, of Bremen, expert on her part to assess damages for destruction of the Frye, and accepted the proposals of the United States for submission to the Hague Tribunal of the interpretation of the treaties of 1785, 1799, and 1828. Germany further agreed not to destroy American vessels carrying contraband, if it is not possible to take them into port, except when destruction is permissible under the Declaration of London.

American Journal of International Law, October, 1915,
p. 971.

Text issued by Department of State. U. S.

- Sept. 23. Protocol of agreement signed as to export of embargoed goods from Russia to United States.

American Journal of International Law, United States
Treaty Series, No. 618.

- Sept. 24. Note from Austria-Hungary in answer to the American note of August 16 as to the sale of munitions of war to belligerents.

American Journal of International Law, October, 1915,
p. 971.

New York Times, September 21, 1915.

- Oct. 4. Belgium presented a note to the United States as to the allegations that Germany had forced Belgians to labor for the Germans.

American Journal of International Law, January,
1916, p. 144.

New York Times, October 4, 1915.

- Oct. 9. Secretary of State, United States, announced that the Pan-American Conference on Mexico had decided unanimously in favor of the recognition of the government of Carranza as the *de facto* government of Mexico.

American Journal of International Law, January,
1916, p. 145.

New York Times, October 10, 1915.

- Oct. 12. Great Britain presented to the United States a memorandum as to goods of American packers seized while consigned to neutral countries.

American Journal of International Law, January,
1916, p. 145.

Text issued by Department of State.

New York Times, October 12, 1915.

- Oct. 12. Germany sent a note to the United States on the subject of passports.

American Journal of International Law, January,
1916, p. 145.

New York Times, October 13, 1915.

- Oct. 12. The United States sent a note to Germany as to the Frye case.

American Journal of International Law, January,
1916, p. 145.

Text issued by Department of State.

New York Times, October 13, 19, 1915.

- Oct. 19. The United States recognized the Carranza government as the *de facto* government of Mexico.
American Journal of International Law, January, 1916, p. 146.
New York Times, October 20, 1915.
- Oct. 20. The United States, by two proclamations, placed an embargo on the shipment of arms and munitions of war to Mexico and lifted the embargo as to such articles consigned to the Mexican government headed by Carranza.
American Journal of International Law, January, 1916, p. 146.
New York Times, October 21, 1915.
- Oct. 21. The United States sent a note to Great Britain protesting against restrictions on American commerce.
American Journal of International Law, January, 1916, p. 146.
New York Times, October 28, 1915.
Text issued by Department of State.
- Oct. 21. Turkey in a note to the United States denied the alleged Armenian atrocities.
American Journal of International Law, January, 1916, p. 147.
New York Times, October 22, 1915.
- Oct. 22. Ratifications exchanged between United States and China of the treaty for the advancement of peace, signed September 15, 1914.
American Journal of International Law, January, 1916, p. 147.
United States Treaty Series, No. 619.
- Oct. 29. A second note received from Austria in reply to the note of the United States of August 16 as to the trade in munitions of war.
American Journal of International Law, January, 1916, p. 147.
Text issued by Department of State.

- Oct. 30. The Department of State announced that the Naval Board of Inquiry reported that the *Hesperian* was sunk by a torpedo.

American Journal of International Law, January, 1916, p. 147.

New York Times, October 31, 1915.

- Oct. 31. The steamship *Hocking*, of the Atlantic Transport Company, and the Dutch steamer *Hamborn* were seized by the British and taken into Halifax. The *Hocking* was originally the *Ameland* and flew the Dutch flag. It was bought by Jensen, of Copenhagen, and transferred to American register November 30. The *Genesee* and *Kankakee*, of the same line, were seized and their requisition without hearing in prize court announced. The United States protested and Great Britain announced the ships would be brought before a prize court for adjudication.

American Journal of International Law, January, 1916, p. 147.

New York Times, December 2, 3, 4, 1916.

- Nov. 3. United States and Great Britain by exchange of notes extended the time for appointment of the commission under article 11, treaty of September 15, 1915.

American Journal of International Law, January, 1916, p. 148.

U. S. Treaty Series No. 602-A.

- Nov. 3. The United States and Guatemala made like extension as to treaty of September 20, 1915.

American Journal of International Law, January, 1916, p. 148.

U. S. Treaty Series No. 598-A.

(Like extensions agreed on with France, November 10th; Spain and Portugal, November 16.)

American Journal of International Law, April, 1916, p. 381-2.

- Nov. 8. United States protested to Germany against the seizure of the American steamer *Pass of Balmaha*, which was captured by a British vessel and later taken by a German vessel and ordered before the prize court at Hamburg. The

captured ship was under Canadian register at the beginning of the war, but most of the stock in the Canadian company holding her belonged to United States owners.

American Journal of International Law, January, 1916, p. 148.

- Nov. 9. The Italian liner Ancona from Naples to New York was sunk by an Austrian submarine.

American Journal of International Law, January, 1916, p. 148.

New York Times, November 10, 1915.

- Nov. 11. The United States proclaimed her neutrality between France, Great Britain, Italy, Serbia and Bulgaria.

American Journal of International Law, January, 1916, p. 149.

Text issued by State Department.

Proclamation No. 1317.

- Nov. 16-22. The United States and Paraguay extended the time for appointment of the commission under article 11 of treaty of August 29, 1914.

American Journal of International Law, January, 1916, p. 149.

U. S. Treaty Series No. 614-A.

- Nov. 16. The United States and Sweden did the same thing under article 11 of the treaty of October 13, 1914.

American Journal of International Law, January, 1916, p. 149.

U. S. Treaty Series No. 607-A.

- Nov. 27. The United States and Panama signed a protocol for the determination of the amount of damages caused by the riot at Panama City, July 4, 1912.

American Journal of International Law, January, 1916, p. 149.

U. S. Treaty Series No. 620.

- Nov. 29. Germany replied to the note of the United States of October 14 as to the Frye. She agreed to the appointment of two experts but no umpire, and enclosed a draft compromise for submission to the Hague tribunal of the interpretation of portions of the Prussian-American treaties.

She agreed, until the decision of the tribunal, to sink only such American ships as bore contraband under preconditions provided by the Declaration of London, that in such case those on board will not be left to life boats except where the conditions make it absolutely certain they will reach the nearest port.

American Journal of International Law, January, 1916, p. 149.

Text issued by State Department.

New York Times, December 9, 1915.

- Dec. 3. The United States asked the recall of Captain K. Boy-Ed, Naval Attaché, and Captain Franz von Papen, Military Attaché of the German Embassy.

American Journal of International Law, January, 1916, p. 150.

- Dec. 4. An Austrian submarine reported to have shelled the American bark Petrolite.

New York Times, December 5, 1915.

American Journal of International Law, April, 1916, p. 382.

- Dec. 6. The United States protested to Austria-Hungary against the sinking of the Ancona and demanded that the act be denounced, the officer who perpetrated the deed punished and an indemnity paid for the American lives lost.

American Journal of International Law, January, 1916, p. 150.

Text, New York Times, December 13, 1915.

- Dec. 8. The French cruiser Descartes searched the Porto-Rican liners Coamo, Carolina, and San Juan, taking from them five Germans.

American Journal of International Law, January, 1916, p. 150.

New York Times, December 9-11, 1915.

- Dec. 13. The United States received a note from Great Britain replying to the American note as to American and British exports to neutral countries.

American Journal of International Law, January, 1916, p. 150.

Text, New York Times, December 19, 1915.

- Dec. 14. The United States protested to France against the taking of Germans from the American ships Coamo, Carolina, and San Juan.
American Journal of International Law, January, 1916, p. 150.
New York Times, December 15, 1915.
- Dec. 15. Austria-Hungary replied to United States note of December 6 as to the Ancona.
American Journal of International Law, January, 1916, p. 150.
Text issued by Department of State.
Text, New York Times, December 19, 1915.
- Dec. 19. The United States sent to Austria-Hungary a rejoinder to her answer as to the Ancona.
American Journal of International Law, January, 1916, p. 151.
New York Times, December 20, 1915.
Text, New York Times, December 23, 1915.
- Dec. 28. Eight indictments were returned by a federal grand jury in New York charging a congressman, an ex-congressman and six others with conspiracy to restrain commerce in attempts to hinder shipments of war supplies to the allied powers.
American Journal of International Law, January, 1916, p. 151.
- Dec. 29. Second note from Austria-Hungary replying to United States note of December 19 as to the Ancona.
American Journal of International Law, January, 1916, p. 151.
Eng. Text, New York Times, January 1, 1916.
- Dec. 30. British passenger steamer Persia sunk in Mediterranean near Alexandria, Egypt. Robert M. McNeil, U. S. Consul at Aden, lost.
American Journal of International Law, January, 1916, p. 151.

- Dec. 31. Great Britain announced that all post packages consigned to Germany and Austria containing contraband would be seized.

American Journal of International Law, January, 1916, p. 151.

New York Times, January 1, 1916.

1916.

- Jan. 4. United States sent a note to Great Britain as to the removal of United States mail from steamships.

Text issued by Department of State.

American Journal of International Law, April, 1916, p. 382.

New York Times, January 27, 1916.

- Jan. 7. Germany presented a note to the United States relative to submarine warfare.

Text Sup. American Journal of International Law.

American Journal of International Law, April, 1916, p. 382.

- Jan. 8. Germany replied to the United States note of October 4, 1915, as to the Frye, that pending the decision by arbitration, American ships will be sunk only when carrying absolute contraband and when passengers and crew can reach port safely.

New York Times, January 9, 1916.

American Journal of International Law, April, 1916, p. 382.

- Jan. 11. Mexican bandits kill 16 Americans taken from train about 50 miles west of Chihuahua City, Mexico.

New York Times, January 12, 1916.

Statement issued by Department of State.

New York Times, January 13, 1916.

American Journal of International Law, April, 1916, p. 382.

- Jan. 19. United States and Chile exchange ratifications of treaty for advancement of peace signed July 24, 1914.

English and Spanish Texts, U. S. Treaty Series No. 621.

American Journal of International Law, April, 1916, p. 383.

- Jan. 22. The United States and Ecuador exchanged ratifications of the treaty for advancement of peace signed October 13, 1914.

English and Spanish Texts, U. S. Treaty Series No. 622.

Spanish Text, B. Rel., Ext. (Ecuador) 8: 761.

American Journal of International Law, April, 1916,
p. 383.

- Jan. 25. The United States sent a note to Great Britain as to restraints on commerce and the latter replied February 19, 1916.

Text issued by Department of State.

American Journal of International Law, April, 1916,
p. 383.

- Jan. 27. The United States sent a note to Italy as to the arming of merchant ships.

New York Times, January 28, 1916.

American Journal of International Law, April, 1916,
p. 383.

- Jan. 30. Money order convention between the United States and France signed.

French Text, Journal Official, Paris, 1916. 1780.

American Journal of International Law, July, 1916.

- Feb. 1. Austria informed the United States that the Persia was not sunk by an Austrian submarine.

New York Times, February 2, 1916.

American Journal of International Law, April, 1916,
p. 384.

- Feb. 1. A German prize crew brought into Hampton Roads, Virginia, the British passenger liner Appam, with 450 passengers. February 19 the English owners libelled the ship.

New York Times, February 2, 29, 1916.

American Journal of International Law, April, 1916,
p. 384.

- Feb. 8. A federal grand jury indicted 32 persons, including German and Turkish Consuls, for alleged conspiracies to

wreck ammunition plants and to furnish supplies to German warships.

New York Times, February 9, 1916.

American Journal of International Law, April, 1916,
p. 384.

- Feb. 15. The French Ambassador presented to the United States a note on behalf of the allies in reply to the United States note of January 4, as to the seizure of neutral mail. Text issued by Department of State.

American Journal of International Law, April, 1916,
p. 384.

- Feb. 16. Great Britain replied to the note of the United States of January 25 as to restraints on commerce.

Text issued by Department of State, American Journal of International Law, April, 1916, p. 384.

- Feb. 17. Sweden appealed to the United States for cooperation with other neutral countries in an effort to cause Great Britain to cease interfering with mails.

New York Times, February 18, 1916.

American Journal of International Law, April, 1916,
p. 384.

- Feb. 18. The British cruiser Lawrentic stopped the American steamer China on the high seas about 10 miles from the entrance of the Yangtze-kiang, boarded her with an armed party and, despite the protests of the captain, removed from her 28 Germans, 8 Austrians and 2 Turks, including physicians and merchants. These were taken as prisoners to the military barracks at Hongkong. February 23 the United States demanded the release of all so taken. On March 16 Great Britain refused.

Text issued by Department of State.

American Journal of International Law, April, 1916,
p. 385.

- Feb. 18. The United States Senate ratified a treaty with Nicaragua, under which the United States is to acquire a perpetual right of way along the San Juan River and Lake Nicaragua for an inter-oceanic canal by payment of \$3,000,000 in gold. As originally negotiated the treaty provided

for American supervision equal to protection. The Senate amended the treaty to cover American supervision of the expenditure of the \$3,000,000.

Text, *New York Times*, February 19, 1916.

American Journal of International Law, April, 1916,
p. 385.

Feb. 24. President Wilson in letters to the committees of both Houses of Congress on Foreign Relations asked that the question of warning Americans to stay off merchantmen be voted upon. In both Houses resolutions containing such warnings were tabled.

Congressional Record 53: 3556, 4223, 5966.

American Journal of International Law, April, 1916,
p. 385.

March 2. The Department of State sent to the German Ambassador the decision relating to the status of the German prize, the Appam, brought into Hampton Roads February 1, 1916.

New York Times, March 3, 1916.

American Journal of International Law, April, 1916,
p. 386.

Text on May 17 issued by Department of State.

See *New York Times*, May 17, 1916.

March 5. The United States sent a note to Austria as to the shelling of the American bark *Petrolite* on December 4, 1915.

New York Times, March 9, 1916.

American Journal of International Law, April, 1916,
p. 385.

March 8. Germany in a memorandum to the United States explained her attitude as to the use of submarines.

Text, *New York Times*, March 9, 1916.

American Journal of International Law, April, 1916,
p. 386.

March 9-15. March 9, Pancho Villa, with a band of Mexicans, raided Columbus, New Mexico, firing many buildings and killing 17 Americans, eight of whom were soldiers. On the same day the Secretary of State of the United States sent a

note to the *de facto* government, stating the intention of the United States to pursue and punish the raiders. New York Times, March 10, 12. March 12, the Mexican government sent a reply, dated March 12. Text, New York Times, March 2.

March 12, Carranza issued a proclamation to the Mexican people, stating that permission to send troops into Mexico would only be granted to the United States in return for reciprocal permission to Mexico to send troops into the United States, and calling on the Mexican people to protect their rights and sovereignty. Text, New York Times, March 13. On March 13 the United States sent a note to the Mexican government accepting the offer of Mexico to grant permission to pursue bandits into Mexican territory in return for reciprocal permission for Mexican troops to pursue bandits into American territory and stating that the United States considered the agreement in effect. Text, New York Times, March 14. On March 15 the United States troops entered Mexican territory on the authorized punitive expedition.

New York Times, March 16, 1916.

American Journal of International Law, April, 1916, pp. 386-7.

March 16. Great Britain replied to the note of the United States of February 23 as to passengers taken from the American steamer China on February 18 on the high seas, refusing to release the persons captured.

Text issued by Department of State.

American Journal of International Law, April, 1916, p. 387.

March 17. The United States Senate passed a concurrent resolution extending assurances to the *de facto* government of Mexico that American troops are entering Mexico on a purely punitive expedition and that the sovereignty of Mexico would not be encroached upon.

Congressional Record, Vol. 53, 4889.

American Journal of International Law, April, 1916, p. 387.

March 25. Memorandum issued by Department of State on status of armed merchant ships.

Text issued by Department of State.

New York Times, April 27, 1916.

American Journal of International Law, July, 1916.

March 26. Costa Rica brought suit in the Central American court against Nicaragua for infringing the rights of the former in the matter of the canal treaty with the United States. May 5 the court took jurisdiction and called on Nicaragua to answer.

Washington Post, March 27, 1916.

Evening Star, May 6, 1916.

American Journal of International Law, July, 1916.

March 27. Turkey declares no Turkish submarine sunk the Persia December 30. Germany and Austria had previously denied responsibility.

Review of Reviews, 53: 542.

American Journal of International Law, July, 1916.

March 28. Great Britain replies to the American protest and upholds the seizure of securities in the mails between Holland and the United States on the ground that they were merchandise from Germany, seized in accord with the policy of striking at German credit.

Review of Reviews, 53: 542.

American Journal of International Law, July, 1916.

March 30. Great Britain issued an order in council that neither vessel nor cargo shall be immune from capture for breach of blockade upon the sole ground that she at the moment was on her way to a non-blockaded port. The doctrine of continuous voyage was extended to conditional contraband.

Washington Post, March 31, 1916.

American Journal of International Law, July, 1916.

April 3. The allies replied to protest of the United States as to seizure of mails.

Partial text, New York Times, April 4, 1916.

Text issued by Department of State.

American Journal of International Law, July, 1916.

April 4. Russia sent a note to every neutral nation protesting against torpedoing of the large Russian hospital ship Portugal, and asked the American and Spanish Embassies to bring the note to the attention of the central powers.

New York Times, April 4, 1916.

American Journal of International Law, July, 1916.

April 10. Germany replied to the American note as to the Sussex, Manchester Engineer, Englishman, Berwindvale and Eagle Point. She denied that the Sussex was sunk by her submarine.

Text, New York Times, April 13, 1916.

Washington Post, April 13, 1916.

On May 1 Germany acknowledged that a German submarine sunk the Sussex. Text of all notes issued by Department of State, May 15, 1916.

American Journal of International Law, July, 1916.

April 11. Nicaraguan Congress completed the ratification of the treaty granting the United States two naval bases and a perpetual option on the canal route.

Review of Reviews, 53: 547.

American Journal of International Law, July, 1916.

April 12. Mexican *de facto* government sent a note demanding the recall of the United States troops in Mexico.

Text, New York Times, April 13, 1916.

American Journal of International Law, July, 1916.

April 12. United States forces were attacked at Parral, Mexico, by civilians.

American Journal of International Law, July, 1916.

April 16. Turkey admitted sinking the hospital ship Portugal, March 30, but maintains that the ship was without Red Cross mark, and was being used as a transport.

Review of Reviews, 53: 544.

American Journal of International Law, July, 1916.

April 17. The United States protested to Austria the sinking of the Russian bark Emperor off the Spanish coast. Austria replied May 3, 1916.

Text issued by Department of State.

American Journal of International Law, July, 1916.

- April 18. The United States sent a note to Germany, reviewing submarine operations and American protests from the beginning of the war, and intimating that unless proper assurances were given by Germany that the rules of international law would be observed, diplomatic relations would be discontinued.

Text issued by Department of State.

New York Times, April 19, 1916.

American Journal of International Law, July, 1916.

- April 21. The United States suspended the parcel post convention with Holland.

Washington Evening Star, April 21, 1916.

American Journal of International Law, July, 1916.

- April 24. Answer of Great Britain received to American note of November 5, 1915, as to restrictions on trade.

Text issued by Department of State.

American Journal of International Law, July, 1916.

- May 3. Ratification of treaty executed between the United States and Haiti relating to the finances and economic development and tranquillity of Haiti.

French and English Texts, U. S. Treaty Series No. 623.

American Journal of International Law, July, 1916.

- May 4. A German note was delivered to the Ambassador of the United States at Berlin saying that German submarines had received orders to conduct their warfare in accord with the general principles of visit and search recognized by international law, and that merchant vessels, within and without the war zone, will not be sunk without warning and without the saving of human lives, unless these ships attempt to escape or offer resistance.

The previous destruction of such ships was held due to the illegal blockade declared by Great Britain and, unless this should be modified, Germany reserves complete liberty of decision.

Text issued by Department of State.

- May 5. Germany replies to note of United States of May 20 as to submarine warfare.

Text, New York Times, May 6, 1916.

American Journal of International Law, July, 1916.

- May 5. Great Britain announced prospective changes in blockade rules. First, new plans for examination of neutral mails. Second, that several early orders in council would be abandoned. Third, that the Germans and Austrians taken from American steamer *China* would be released.

New York Times, May 6, 1916.

American Journal of International Law, July, 1916.

- May 5. Mexican bandits raided Glen Springs, Texas.

New York Times, May 6, 1916.

- May 6. The Central American Court of Justice decided on suit of Costa Rica that Nicaragua had not the right to negotiate the canal treaty with the United States without consulting Costa Rica.

Washington Evening Star, May 6, 1916.

American Journal of International Law, July, 1916.

- May 8. The United States replied to the German note of May 4 as to submarine warfare that the United States cannot entertain any suggestions that the rights of Americans on the high seas to be respected by German naval authorities are in the slightest degree contingent on the conduct of any other government.

Text, New York Times, May 9, 1916.

Text issued by Department of State.

American Journal of International Law, July, 1916.

- May 10. Germany sent a note acknowledging that later inquiry showed the *Sussex* was sunk by a German submarine.

Text, New York Times, May 11, 1916.

Text of all notes issued by Department of State, May 15, 1916.

- May 12. German Ambassador redelivered to the Department of State a note suggesting that a neutral vessel may be attacked by a German submarine if, when challenged to halt, the vessel fails to obey and turns her bow towards the submarine.

Text, New York Times, May 17, 1916.

American Journal of International Law, July, 1916.

- May 16. The Austrian Foreign Office delivered notes to representatives of allied and neutral states at Vienna protesting

the torpedoing of the Austrian hospital ship *Electra*, the attack on the *Daniel Emo*, the *Lagres* and *Dubrovink*.

Text, New York Times, May 17, 1916.

May 24. A note from the Secretary of State was delivered in duplicate to the French and British Ambassadors. It challenged the legality of the acts of the British and French governments in interrupting the mails to and from the United States and says only a radical change will satisfy the United States. It says the United States can no longer tolerate the wrongs which citizens of the United States have suffered, that belligerents cannot obtain rightful jurisdiction over neutral mail ships by forcing them to visit belligerent ports for the purpose of seizing their mails and getting greater rights than on the high seas; that the United States will press claims for full reparation.

May 31. The Mexican *de facto* government made public a note to the United States claiming that United States forces are in Mexican territory without the consent of the Mexican government and in violation of Mexican sovereignty, and that "The Mexican government therefore invited the United States to bring to an end this unsupportable situation," "and to support its protestations and declarations of friendship by an immediate withdrawal." The note reviews the incidents affecting the situation at length, mentions the conferences held between Generals Scott and Funston on the part of the United States and General Obregon on the part of Mexico and claims that assurances were given by General Scott that the troops would be withdrawn and no more sent into Mexico. The note intimates a resort to arms as necessary on the part of Mexico, but that it is desired to avoid this, that, under the treaty of 1848, it is its duty to do all that is possible to find a peaceful solution. It therefore requests of the United States "a more categorical explanation of its real intentions toward Mexico."

The note complains of the discrepancy between the words and the acts of the United States government, charges that, in the past, General Scott and the State Department gave "decided support" to Villa and that the American Catholic

clergy and American intervention press are constantly working against the constitutional government of Mexico, and that the embargo on the export of arms and munitions to the Mexican government is an unfriendly and suspicious fact. It invites on the part of the United States "real and effective action, which will convince the Mexican people of the sincerity of its purposes," and adds, "This action in the present situation cannot be other than the immediate withdrawal of American troops now in Mexican territory."

Washington Post, June 1, 1916.

Your committee is compelled to close its report at this date in the midst of these important negotiations on account of the requirements of the Secretary for publication. They earnestly hope that the unparalleled conflicts which distract, distress and impoverish the world may be brought to a close and the establishment of a firm and lasting peace accomplished. That the good offices of the Government of the United States, without seeking to force a premature adjustment or to dominate its terms, may always be open to the nations, unhappily involved, for that end, so ardently desired by mankind.

All of which is respectfully submitted.

CHARLES NOBLE GREGORY,
JAMES BROWN SCOTT,
THEODORE S. WOOLSEY,
CHARLES CHENEY HYDE,
J. PARKER KIRLIN.

June 1, 1916.

REPORT

OF THE

COMMITTEE TO OPPOSE JUDICIAL RECALL.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The undersigned, appointed for the year 1915-1916, as your Committee to Oppose the Judicial Recall, respectfully submit the following report:

Since the last report of this committee, there has not been passed by a state legislature any measure providing for judicial recall, either in the form of the recall of judges or of the recall of judicial decisions; nor, during the past year, has any proposal for such a measure been submitted to the electorate of a state, either for the adoption of a constitutional amendment or otherwise.

It seems now reasonably certain that no state which has not already adopted a constitutional amendment providing for judicial recall, will do so. In order, therefore, to indicate the present situation in the United States, we next list those states in which judicial recall has become a constitutional provision, referring, for more detailed statement of the nature of the provisions, to the synopsis which is made part of the report of this committee for the year 1913.

JUDICIAL RECALL MEASURES NOW IN FORCE.

Constitutional amendments, providing for judicial recall, either the recall of judges or of judicial decisions, or of both, are now in force in the following states:

OREGON.—Recall of judges. Constitution, Article II, Sec. 18. Adopted in 1908 under initiative by the people.

CALIFORNIA.—Recall of judges. Constitution, Article XXIII. Adopted in 1911.

COLORADO.—Recall of judges and recall of judicial decisions. Constitution, New Article XXI, and amendment to Article VI, Sec. 1. Adopted in 1912 under initiative by the people.

ARIZONA.—Recall of judges. Constitution, Article VIII, Sec. 1. Adopted in 1912.

NEVADA.—Recall of judges. Constitution, Article II, Sec. 9. Adopted in 1912. Facilitating legislation adopted in 1913—Chapter 258, Laws 1913.

KANSAS.—Recall of judges. Constitution, Article IV, Secs. 3, 4 and 5. Adopted in 1914.

REPORTS FROM THE VARIOUS STATES.

Reports from the various states, recently gathered, show that during the past year no attempt has been made at judicial recall legislation. The significance of this fact is shown by the nine states whose legislatures held sessions in 1916: New York, New Jersey, Maryland, Virginia, South Carolina, Georgia, Kentucky, Mississippi, and New Mexico. In none of these nine states, with the exception of New York, has the fallacy of judicial recall ever been seriously agitated as a constitutional amendment. The recent New York Constitutional Convention did not favorably consider any judicial recall proposition, although advocates of judicial recall had attempted to make that an issue in the convention.

The adoption in the United States of the judicial recall, as a state constitutional measure, is, as above shown, confined to six states west of the Mississippi River. It is in the western states, lying wholly or in part west of the Mississippi River, that judicial recall measures have been most seriously agitated and proposed. Its agitation seems to be an outcrop of western radicalism, although its subtle and subversive influence has appeared, some times with considerable strength, in Wisconsin, New York, Ohio, and a few other eastern states. It is probable that it is only in the far West that there is even a remnant of danger of its future adoption. Its agitation seems to follow, in all instances, some spasm of unrest over local conditions, either political or industrial. The propaganda of Socialism, now so prevalent and persistent in this country, and particularly in the far western states, continues to extend its influence to the advocacy of judicial recall. In many localities in the West there is, through the Socialist and other radical organizations, an organized effort to procure the

adoption of the judicial recall in the legislatures which will meet in 1917. Little is to be feared, however, from such attempts, because the intelligent voter has, through the agitation of this question, in the press and by other means, become informed as to what is meant by judicial recall. It has not been necessary, during the past year, for your committee to engage in any legislative contest on this issue. But we have continued our campaign of education and have promoted enlightenment on this question, through the press and through the distribution of literature.

In many of the mining camps of Colorado and other parts of the West, and in many rural communities, local libraries and reading rooms are flooded with Socialist publications, both periodicals and pamphlets; so that opportunities are given for reading only one side of this question. We have, in answer to many requests, supplied for such reading rooms and localities literature which presented the sane view of American constitutional government and of the destructive nature of the judicial recall. We are informed that our work has effected an obvious change in sentiment and has checked, to a considerable extent, the leaning towards the Socialist view of this question.

From Colorado, the report is that, with one exception, there has been no attempt during the past year to invoke the judicial recall; and that there has been such a change in sentiment there that, if the present constitutional amendments providing for the recall of judges and of judicial decisions were now for the first time presented for adoption, they would be voted down. There is not as yet any concerted effort to rid the state constitution of these radical provisions, but the people are looking forward to a revision of the constitution which shall eliminate these features.

Beside the instance occurring in California, mentioned below, the only attempt at judicial recall during the past year, which is reported to us, is the notable one in connection with District Judge H. P. Burke, of the Thirteenth District Court in Colorado. After a heated vituperative campaign against Judge Burke's candidacy he was elected, although his opponent was on the ticket of the majority parties. This was in the election of 1912, at which the Colorado recall constitutional amendments

were adopted. His political opponents openly threatened to use the recall against him as soon as possible. In other words, the judicial recall was to be used solely as an instrument to unseat a political opponent. The judge's political enemies seized upon an incident at a certain criminal trial, at which this judge presided, as a pretext for their recall agitation. Judge Burke granted a new trial after conviction in the criminal case; the propriety of which conviction was so questionable that the district attorney in open court approved of the judge's action, and presented in substance an apology for having proceeded thus far with the prosecution. Indeed, the district attorney voluntarily filed a motion to dismiss the case with a written statement of his reasons. Under the Colorado statute there was no discretion left to the judge and he, as a matter of course, granted the motion. The political enemies of the judge, including certain citizens back of the prosecution in the case referred to, prepared recall petitions, collected funds from among themselves and various other disappointed litigants, and circulated in the public press, and by other means, calumniations against the judge. Circulators of the petitions received a price for each name procured, and the leaders of the recall movement directed their followers, and circulators of petitions, by letter, to keep away from centers of population and places where they might encounter men well informed on the matters in question. Inflammatory circulars and newspaper articles were scattered broadcast throughout the district. The State Bar Association, after examining the facts, upheld the judge. As a result a recall petition was filed with the Secretary of State apparently having the required number of signatures; but, before further action, over 25 per cent of the signers withdrew their signatures. The protest against the petition was upheld. The grounds set forth in the recall petition were as follows:

"First: We are advised, and therefore charge, that in his capacity of judge of said court, in the case of the People *vs.* —, lately pending in the District Court of — County, Colorado, he arbitrarily, unjustly and in an unjudicial spirit, set aside and held for naught the verdict of 'guilty' rendered by the jury; and,

"Second: That he indulged in unbecoming and inexcusable criticism of the jury in that case.

"Third: That upon the bench he is disposed to uncleverness [*sic?*] and only less frequently to arbitrary and oppressive conduct."

It is apparent that the action of Judge Burke, in the criminal case referred to, was not only not "arbitrary" but was justified. A careful examination of the remarks of the judge at the time of trial shows that the second ground was wholly without warrant. The third charge, that he was "disposed to uncleverness, etc.," is negatived by almost unanimous support which he received from the members of the Bar.

From California, the report is that during the past year there has been only one attempt, and that unsuccessful, to invoke the judicial recall. This was the case of a Superior Court judge in one of the northern counties. It is stated that the judicial recall in California is in such disrepute as to be practically harmless. In that state, however, the State Federation of Labor is pursuing a campaign to commit candidates for the United States Senate and House of Representatives to the recall of federal judges.

The judicial recall, and the recall generally, are growing in disfavor in California. Here again its only use is to satisfy the whim of political malcontents. Upon the election of Mayor Rolph, of San Francisco, former mayor Schmitz threatened to start recall proceedings against Rolph, and himself become a candidate for the office again. In commenting upon the recall in this connection, the *Oakland Tribune* of April 30th, last, says:

"It is another striking example of the vicious and stupid misuses of the recall. Any individual can trump up a dozen charges, get paid circulators to secure the ridiculously small number of signatures required on the recall petition and then start to outrage a municipality. . . . Self-seeking schemers are fast bringing the recall into disrepute, and if the citizens would preserve this very useful instrument for their protection they must awake to the necessity of putting it above motives of malice, revenge and club-wielding."

In Washington, the constitutional amendment of 1911, for the recall of elective officers, excepts all "judges of courts of record." This allows legislation providing for the recall of justices of the peace, and of the judges of police, and of other local and municipal, inferior courts. Such recall has not been in-

voked against any inferior judge and, except on the part of a few extreme radicals, there is no active sentiment favoring judicial recall for the higher judges. The recall of judicial decisions is mentioned only with contempt and ridicule.

In North Dakota, there is a current agitation on the part of the so-called "Non-Partisan League," an organization of farmers in that state which is being quite prominent in politics and is advocating as part of its platform the recall of judges. This league will show its hand in the primary election of the 28th of June instant, and also in the elections next fall for the legislature of 1917.

In Arizona, there has been no attempt to invoke the judicial recall, but there is reported an instance of recall, not judicial, against a sheriff, of Pima County, because of the conduct of his deputies. The report says:

"In the first instance, two deputies attempted to administer the third degree to two criminals by hanging them by the neck to a tree. They were unsuccessful in securing any evidence owing to the fact that the deputies let the men remain so long hanging by the neck that they died.

"In the second instance, two deputies, in pursuit of some alleged criminal for a minor offense, attempted to stop a woman driving peacefully along the street, believing she knew something of the escape of the supposed criminal, and their aim was better than they calculated, by reason of which she was riddled with bullets."

Public opinion was unanimous in favor of the sheriff's recall, but the recall statute, when it came to be applied, was found so cumbersome and unworkable that the recall election was enjoined by the courts. The public sentiment in Arizona is changing to opposition to recall.

In Arkansas, a constitutional amendment for the recall of judges, which was initiated by the people, was passed at the 1912 election, but was invalidated by the State Supreme Court on the ground that it had not been properly submitted to the people. The 1915 legislature, however, closed without renewing the proposal; and, in the meantime, sentiment has so changed that it seems probable that no further attempt at judicial recall will be made in that state.

In Minnesota, the legislative proposal for a constitutional amendment for the recall of judges was defeated at the general

election in 1914; and the legislature of 1915 rejected another proposal, in connection with the increase of Supreme Court judges from five to seven, that more than a majority of the court should be necessary to declare a statute unconstitutional.

In Oregon, the situation is well summarized by the *Nation* in its number of June 8th, last:

"The theory that the recall is a sort of handy 'gun behind the door' is not borne out by conditions in Oregon. A number of recall elections were held at the same time as the recent primaries. All of them were caused by the tremendous issue of what roads should be benefited by the money that the county concerned was going to spend upon its highways. People in every section insisted that the money should be spent upon their road or roads, and the county commissioners, having to leave out somebody, inevitably became the object of recall petitions. One county had the piquant experience of recalling one set of commissioners, only to find that the new set was not able to please everybody any more satisfactorily than the board it had succeeded in ousting. With impartial justice, the recallers were promptly placed upon a ballot to recall them. In consequence of this uncertainty, in which the only certainty is that of making enemies, 'many worthy citizens,' according to the *Oregon Voter*, are refusing to be candidates for these offices. But if a man may not decline to run for President in Oregon, surely he should not be permitted exemption from a county commissionership."

THE SITUATION GENERALLY.

There is a very significant change in the attitude toward judicial recall which has been previously assumed by many of its former leading advocates.

Ex-President Roosevelt has taken pains to assert that his intention not to "pussyfoot" on the issues previously raised by him, does not include his adherence to the judicial decision recall. Indeed, he has said that, even if he had been elected in 1912, he would not have recommended that the judicial decision recall plank in the "Progressive" party platform be enacted into legislation, because such a law would be "cumbersome." The platform of the same so-called "Progressive" party, recently adopted at Chicago, studiously omits any direct mention of the judicial recall. In its platform of 1912, however, under the head of "Popular Review of Judicial Decisions," it pledges

itself to provide that decisions holding state statutes unconstitutional could be made ineffective by a vote of the people. The platform of 1916, by reference, reaffirms this recall of judicial decisions plank; for, referring to the platform of 1912, it says: "In the platform then adopted, we set forth our position on public questions. We here reaffirm the declarations there made on national issues."

The two who have next been most conspicuously advocates of the judicial recall are supreme court judges; the one in Ohio, and the other in North Carolina. Their present comparative silence as to judicial recall is also significant. In the *Saturday Evening Post* of June 10th, last, Judge R. M. Wanamaker, of Ohio, reiterates his claim that the courts have no constitutional power to declare statutes invalid, as repugnant to constitutional limitations. But he carefully avoids any advocacy of judicial recall as a correction for the abuse or "usurpation" of power by the courts. Indeed, he expressly refers to the recall of judges and the recall of judicial decisions as ineffective to accomplish their avowed purpose, and as difficult in practical operation. He readjusts his argument to lead to the conclusion, that courts should be prohibited from declaring statutes unconstitutional by a mere majority vote, and that the Federal Supreme Court should by constitutional provision be allowed to declare any statute unconstitutional only by a vote of at least seven out of the nine judges.

Chief Justice Walter Clark, of North Carolina, in his recent discussion in the *Virginia Law Review* (Volume III, No. 3), and reprinted as a Senate document last February, (No. 308, 64th Congress, 1st session), seems to have given up the judicial recall, either in the form of recall of judges, or recall of judicial decisions, as a means of judicial correction or discipline; and he centers his argument upon a denial of the constitutional right of courts to declare statutes unconstitutional. In another recent discussion of the subject by Judge Clark, however, which for further circulation he has now (May 31, 1916) had printed as a United States Senate document, he impliedly approves of the recall of judges as a doctrine by which "the people have been forced to assert ultimate sovereignty," as against the "myth" that the courts have the power to set aside an Act of Congress,

or of a state legislature, as unconstitutional. Furthermore, he includes the recall of judicial decisions as a "remedy" which is "less objectionable" than the remedy by the recall of judges. He impliedly approves the so-called "Ohio plan," which is the remedy urged by Judge Wanamaker—that the unanimous, or more than a majority, decision of a Supreme Court be required to set aside a statute as unconstitutional. "Some Myths of the Law," *Michigan Law Review*, November, 1914, page 26; U. S. Senate Document, No. 449, 64th Congress, 1st session.) Judge Clark's views are summarized by him as follows:

"Suffice it to say that the true basis of our government is that the people are capable of self-government, and that their will, fairly ascertained, shall control. We have never given to the judges the 'judicial veto' power. It has been assumed, but it cannot be maintained. It makes of the courts small legislative bodies which may be appointed, or nominated, by the special interests. The question then is squarely presented which shall control, the 'interests' or the body of the people? One must know little of the temper of the American people if he believes that this myth can long survive the fierce light that is being shed upon it.

"The demand for reform in legal procedure and of the abuses incident to our practice is insistent. It must be heeded. Their importance, however, is small compared with the necessity of abandoning the usurped power by which the courts have become legislative bodies, able and anxious too often to thwart the will of the people as to their public policies when this has been declared by them at the polls in selecting their duly constituted agents for making their laws."

This adherence to the theory that the judicial function of measuring the validity of statutes by the express rule of the constitution is a "usurped" power, has incited the New York State Bar Association, through its committee and under the tireless and very efficient leadership of Chairman Henry A. Forster, to compile and report the main arguments against the "usurpation" theory. Two such reports have been issued, entitled, "On the Duty of Courts to Refuse to Execute Statutes in Contravention of the Fundamental Law." The first report was presented to the State Bar Association on January 22-23, 1915, and has been printed as a United States Senate document (No. 941, 63d Congress, 3d session). The second report was presented on

January 14-15, 1916. These reports are a complete answer to the "judicial usurpation" theory, if any further answer be needed than that given by Judge Marshall in his decision in *Marbury vs. Madison* (1 Cranch, 137).

The plan of the American Judicature Society, which involves judicial recall features, was outlined in our last report. The literature of that society, issued during the past year, indicates an adherence to the objectionable features of its proposed reforms in the organization of the courts. Its proposition to retire judges by votes submitted to the electorate at certain intervals of time, is being persistently urged before various state legislatures. It is urged by the society that its plan should "not be confused with the proposal for the so-called 'recall' of judges to which it bears a superficial resemblance." The fact remains, however, that the plan suggested involves the retirement of a judge by the arbitrary vote of the electorate, and that, too, within the period for which such judge has been selected. Such use of the recall cannot be likened to the privilege of reelection of a judge after the latter's term has expired. The objectionable feature is the arbitrary power in the electorate to retire a judicial officer while he is yet in the performance of his duties, and before the expiration of his term of office (see Bulletin X, American Judicature Society).

The work of this committee during the past year has been much less than that which has been required in previous years. This is due partially to the fact that the legislatures of only nine states, and all of these Eastern States, have been in session. But it is due mostly to the fact that a more general understanding of the viciousness of the judicial recall has become prevalent throughout the country; and thinking people, and the press generally, are not deceived by the subtle and enticing arguments of the judicial recall advocate. The citizens of the nation have become educated on the matter; and this process of education, we feel justified in saying, is very largely due to the work of the American Bar Association through the efforts of its prominent members and officers, and, in no small degree, to the continued efforts of this committee, especially appointed for that purpose.

We have thought it unnecessary to continue in our report the usual annual bibliography of the subject. Arguments against

judicial recall are constantly appearing in printed addresses, pamphlets, periodicals, and the daily press. As shown above, those who were formerly its leading advocates are now comparatively silent upon the question. Its advocacy is now confined to those who are uninformed, or who have been incited to radical and unreasonable views on constitutional questions.

It seems that, from now on, the opposition to the judicial recall is more than ever a matter of education. It would seem that such work could not be more effectively accomplished than through the continued efforts of this Association. Its committee as now organized includes a member from each state who is alive to the question. Such a committee, therefore, affords an organized means of keeping fully informed on the subject, and with organized methods of attack where such efforts shall be deemed necessary.

RECOMMENDATIONS.

We recommend that the American Bar Association maintain its organized opposition to judicial recall; and that the work of its committee be continued.

Respectfully submitted,

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LAWRENCE COOPER, Huntsville, Alabama,
ROYAL A. GUNNISON, Juneau, Alaska,
EVERETT E. ELLINWOOD, Bisbee, Arizona,
GEORGE B. ROSE, Little Rock, Arkansas,
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ALEXANDER R. LAWTON, Savannah, Georgia,
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REPORT

OF THE

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

(To be presented at the meeting of the American Bar Association at Chicago, Ill., August 30, 31, September 1, 1916.)

To the American Bar Association:

Your Committee on Jurisprudence and Law Reform would respectfully beg leave to submit their report as follows:

The only matter referred to the committee for consideration and report was

"The bill to regulate expert testimony presented by the Committee on Insanity and Criminal Responsibility to the American Institute of Criminal Law and Criminology, October 22, 1914, and unanimously approved by the Institute."

This matter was fully covered by the committee's report presented last year, in which they recommended the Keedy Bill as submitted to them, except that in lieu of Section 3 of the bill they recommended a very carefully drawn section which they hoped would remedy the evils aimed at by the bill without sanctioning "third degree" processes for extorting confessions. Neither Professor Wigmore nor Professor Keedy was able to be present at last year's meeting of the Association, and as it was understood that they wished to discuss and advocate their bill, the matter was postponed until this year for their accommodation.

This year, to his very great regret, Mr. Ketcham finds himself unable to be at the meeting, and as he has very decided views on some of the questions covered by the bill, the committee recommend that the consideration be again postponed until Mr. Ketcham can be present.

WILLIAM L. PUTNAM,
WILLIAM A. KETCHAM,
HENRY W. TAFT,
CLARENCE D. CLARK,
EDGAR ALLAN POE.

REPORT

OF THE

SPECIAL COMMITTEE ON LEGISLATIVE DRAFTING.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Under the resolution passed at your last annual meeting your committee was directed to continue to prepare for submission to this Association a Legislative Manual which will contain a selection of directions, or suggestions, for drafting laws and model clauses for constantly recurring provisions and problems. Your committee was also authorized to cooperate in the preparation of the Manual with other organizations and individuals, besides continuing any research "pertaining to the improvement of the form of our statutory laws and report the results of its investigations to this Association."

Two topics have been completed during the last year, namely, "Provision for Licensing or Certification" and "Enforcement." The tentative treatment of the topic "Provisions for Licensing or Certification" are herewith submitted as an appendix to this report. We do not submit the material dealing with the topic of "Enforcement," some portions of which have been completed, because this topic has a number of subdivisions and it was considered desirable not to publish any part until all were ready for publication.

Your committee during the last three years has published in tentative form a number of chapters of the proposed Manual. The parts already published, we think, demonstrate the feasibility and value of the proposed work; but we fail to get from this particular form of publication in instalments the reaction by way of helpful criticism and comment, which the committee expected. Therefore, unless directed by the Association, we will hereafter discontinue the publication of the Manual by instalments.

On May 1 your committee submitted to your President, the Hon. Elihu Root, a letter describing the Manual and the work which has already been accomplished, and requesting your President to transmit to the Carnegie Corporation the committee's

application for assistance in the prosecution of the work. If the Carnegie Corporation cooperates with your committee there is no reason why the Manual should not be completed within two, or possibly three years.

No new legislative drafting bureaus were created by the legislation of 1915 or by that, thus far available, enacted in 1916. There have, however, been some interesting statutory provisions for the extension or improvement of the work of existing official drafting agencies.

For the fiscal year beginning July 1, 1915, Congress appropriated \$25,000 for legislative reference work in the Library of Congress and a similar amount has just been appropriated for the fiscal year beginning July 1, 1916.

Recognizing the fact that, if legislators require assistance in the preparation of the statutes enacted by them, the citizen who initiates legislation in those states where the initiative is in operation has still greater need for such assistance, California (Chap. 141, 1915) has imposed on the chief of the Legislative Counsel Bureau the duty of assisting in the preparation of any initiative measure when requested to do so by 25 electors proposing it.

In Vermont (Act No. 10, 1915) the name of the official draftsmen was changed from "revisers of bills" to "legislative draftsmen." Moreover, this act provided that the draftsmen should be appointed not by the Governor, as formerly, but by the presiding officers of the Senate and House with a deciding vote in the chief justice when necessary. Prior to 1915, no bill or resolution could be acted on by either house "until corrected and indorsed by the revisers of bills." This is superseded by the 1915 act, which provides that the legislative draftsmen shall assist members and committees in drafting bills and resolutions when requested, and shall perform the duties of a committee on revision of bills unless the joint rules of the Senate and House provide that such committee be otherwise constituted.

In New York (Chap. 32, 1916) the term of the legislative bill drafting commissioners is made indefinite instead of five years as formerly. Their salaries are reduced from \$6000 to \$5000 each, and a provision entitling them to \$600 each in lieu of expenses is dropped. A more important change is that which provides that the office of the commission at the State Capitol

shall be open from December 1 to the close of the session instead of as formerly, from September 1. Moreover, the salaries of the commissioners are to be paid in the first six months of each year. These provisions tend to confine the duties of the draftsmen to not more than seven months of the year. This seems unfortunate in view of the large amount of drafting and revising work constantly under way in the state departments and interim legislative commissions on which the permanent draftsmen might be usefully employed in that portion of the year when they are not engaged with the duties of the session.

Your committee recommends the adoption of the following resolution:

Resolved, That the Special Committee on Legislative Drafting be continued and directed to continue to prepare for submission to this Association a standard manual of legislation, and the committee is hereby authorized to cooperate for the purpose with other organizations and individuals; and the committee is further authorized to continue any research pertaining to the improvement of the form of our statutory law and report the results of its investigation to this Association.

Respectfully submitted,

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HENRY C. HALL,
THOMAS I. PARKINSON,
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D. CADY HERRICK,
FELIX FRANKFURTER,
JAMES A. FOLEY.

APPENDIX A.

TENTATIVE TEXT OF MANUAL FOR LEGISLATIVE DRAFTING.

Topic: PROVISIONS FOR LICENSING OR CERTIFICATION.

Statutes often make the legality of acts or conditions affecting the public welfare or interest dependent upon an official license, permit, or certificate, and in making such a provision it becomes important to consider in what manner official powers of that

nature should be vested, with a view to securing both the effectiveness of the public policy and the protection of private rights.

Licensing and Mandatory Powers.—The considerations which should control the legislator in the grant of licensing powers necessarily differ from those applying to the vesting of official powers of a purely mandatory character imposing duties or restraints such as the power to issue sanitary orders. Licenses, permits or certificates are sought by individuals for their own purposes, and are not imposed upon anyone without his will or consent, while mandatory orders must be submitted to without any possibility of escape. In a sense, the license as well as the mandatory order may be a *quasi-judicial* determination; but provisions for notice and hearing and other jurisdictional requirements are very much less important in the matter of licenses than in the matter of mandatory orders.

Generally speaking, wherever a statute makes the exercise of an individual right dependent upon enabling administrative action, the qualification of the conditions under which the action is to be taken by such adjectives as: fit, necessary, convenient, reasonable, reputable, etc., vests a discretion in the administrative authority, while the same words when used to qualify administrative powers of restraint or compulsion, limit the jurisdiction of the official, unless expressly qualified by terms referring to the opinion or judgment of the official for determining the existence of the condition (*e. g.*, a license may be issued to a fit person; the license of an unfit person may be revoked).

License and Certificate.—While the term license implies an official authorization to do something otherwise forbidden, in its practical application it is above all a certificate that certain advance requirements of a regulative character have been complied with, which the law has established as conditions precedent for the legality of some act or undertaking. A power to regulate, therefore, includes a power to require licenses, if vested in a legislative body (so in a municipal governing body, 88 Ill. 221; 176 Ill. 340), but the power does not result from an administrative power of supervision, enforcement, or even of prescribing rules of a detailed character; and it is very rare that an administrative officer is expressly authorized to require licenses in his discretion (for an exception see New York Labor Law, Sec. 99).

The conditions prescribed by law may be specified with such objectiveness that the license becomes a purely ministerial act, as, *e. g.*, in case of a marriage license. The term certificate would then be more appropriate. Thus, when New York adopted the policy of removing all discretion from the issue of liquor licenses, the law indicated this change by substituting for the term license the term liquor tax certificate. In many cases, however, the law prescribes conditions which leave room for individual differences of opinion, and a discretionary licensing power results. Whether and to what extent discretion is to be conferred, what terms are effectual to create discretion, and how terms commonly used are likely to be construed in this respect by the courts—these are questions which must be carefully considered in the drafting of statutes.

Discretion, whether to be exercised with regard to particular cases or with regard to classes of cases:

The statute should make it clear whether it is intended that the official discretion which it confers is intended to relate to all cases of a designated class, as a class, or whether each particular case is to be decided on its merits.

Thus, in the case of liquor licenses, if the licensing authority may in its discretion refuse the issue of the license, is it permissible to refuse any license whatsoever on the ground that the liquor traffic is objectionable? Obviously this is a legislative and not a judicial or administrative question (72 Pa. St. 200), and where the legislature intends to delegate this power it will usually be explicit. The intention seems to be expressed in Rev. Laws of Massachusetts, Ch. 100, p. 16: "The licensing board may at any time refuse to issue a license to a person whom it considers unfit to receive the same; but the provisions of this chapter shall not be so construed as to compel said licensing board to grant licenses." Apparently the last proviso confers a *quasi-legislative* discretion, although the intent might have been even more clearly expressed.

Where, in factory laws, permits or exemptions are allowed in the discretion of a commissioner or other official, the question whether individual or class exemptions are intended may be more doubtful.

Even here perhaps the presumption should be that the legislature intended action upon each individual case. Thus, if by the child labor law of Wisconsin the time of employment of a child between 14 and 16 years of age is left to official discretion, this can hardly be other than a discretion controlled by individual conditions.

In Kentucky the statute forbids the employment of any child under 16 years in any occupation dangerous or injurious to health or morals or to life or limb, and provides that as to these matters the decision of the county physician or city health officer, as the case may be, shall be final (see 159 S. W. 971). If this were a generically exercisable discretion, the same occupation might be lawful in the city and unlawful outside; the discretion should therefore be construed as exercisable with reference to each individual case.

In the Labor Law of New York, the difference between official acts of individual and of general application has become more clearly marked by the establishment of the industrial board. Individual orders and permits are now issued by the Commissioner of Labor, while general rules and regulations proceed from the board. Thus, in 1911, Sec. 88 provided for water closets in factories in such number as the Commission of Labor may determine; now the section reads: in such number and located in such place or places as required by the rules and regulations of the industrial board.

Simple Words of Authority.—Cases in which a statute confers a licensing power without any qualifying provision or reference, simply saying that an official may, or shall be authorized to license, or that it shall be lawful for him to license, are perhaps exceptional. More commonly express words or the entire context will point to considerations which are expected to control the exercise of the official power. In a considerable proportion of the cases in which unqualified powers have come before the courts, they were vested in the governing bodies of municipalities. In the City of New York, however, a simple, unqualified power is conferred upon a municipal official to license auctioneers (Charter, Sec. 34, former Charter 1882, Sec. 1985), and a similar power exists with regard to public amusements.

The rule that "may" or equivalent words will be construed as "shall," where private persons have an interest in the exercise of the power, has not been applied to these cases, but the law has been held to vest a discretion uncontrollable by mandamus (*People vs. Grant*, 126 N. Y. 473; *Armstrong vs. Murphy*, 72 N. Y. S. 473; 65 N. Y. App. Div. 123). The courts of New York tend to sustain strong discretionary powers in metropolitan officials, in contrast to the legislative policy which in 1896 eliminated discretion from the grant of the right to engage in the liquor business; and with regard to amusements the tendency is perhaps general.

It has, indeed, been urged that with regard to amusements a system of control which leaves the widest discretion to administrative officials is preferable to statutory regulation even from the point of view of liberty. For if there is a danger of narrow or illiberal standards advocated by an active and insistent minority, a legislative body will yield to the demand as readily as an administrative authority, and "an administrative policy vanishes away when it ceases to be maintained by the active will of the administrator or of the group behind him; but a statute becomes a dead hand, and even after it ceases to be enforced it may still continue as an instrument of political or fiscal blackmail." (John Collier in *Survey*, March 4, 1916, p. 667.)

A mere statutory reference to the condition of the person requiring to be licensed may be sufficient to qualify simple words of authority. The minimum wage acts of 1913 contain a provision to the effect that the commission may issue to a woman physically defective a special license to work at a specified wage which is less than the established minimum wage. It is difficult to conceive of a discretion to refuse such a license except in cases altogether abnormal. The specification of the cause for which the special license is to be issued ("physically defective" or "crippled by age or otherwise") furnishes an adequate and normally the only permissible consideration for the action of the commission.

The Minimum Wage Act of Washington also gives the commission power to issue similar special licenses to apprentices. It is stated (*U. S. Labor Bulletin* 167, p. 12) that under this power the commission has undertaken to limit the number of

apprentices. While clearly intended to operate as a check upon the abuse of such a power, the limitation of numbers is a legislative act, and not within the usual bounds of discretion. The act should have empowered the commission, as it does in Wisconsin, to make rules and regulations for the issue of special licenses, or should have fixed the permissible proportion of special licenses to numbers employed, as is done in Minnesota, or the absolute number of special licenses, as in California (1915).

Minor Acts Dependent Upon Official Consent.—It seems that reference to consent without qualification is common in cases of relatively minor or secondary importance where the legislature merely intends to afford a possibility of checking the occasional abuse of an otherwise harmless privilege. Thus particularly, the transfer of a license, or its exercise at a place different from the one originally designated, is made to depend upon the approval of an official. In the National Bank Act, choice and change of name are subject to the approval of the comptroller, the purpose being perhaps to permit him to guard against the adoption of a misleadingly similar name to one already used, a matter particularly guarded against in the Insurance Law of New York (Sec. 10).

By the National Banking Act, extension of charter, increase or reduction of capital, the organization of a bank with a smaller than the original minimum capital, the establishment of a city as a reserve city, must all be authorized or approved by the comptroller, without indicating any qualifying condition (U. S. R. St., Secs. 5134, 5133, 5142, 5143, 1902, Ct. 503). In all these cases it is doubtless contemplated that unless the request is manifestly improper, it will be granted as a matter of course, and it does not appear that difficulties have arisen in the administration of these provisions.

Dispensations.—Another not uncommon form of unqualified power is the provision making dispensation from a requirement or prohibition dependent upon official consent or approval. Thus, in the Labor Law of New York, Sec. 85, "not less than 400 cubic feet for each employee, unless by the written consent of the commissioners"; Sec. 80, "60 minutes for meals unless the commissioner permits a shorter time."

If such permit were expected to be given as a matter of course, the entire rule would break down, and unless the official lays down general rules for the granting of permits, this will be the almost inevitable effect, since otherwise he will expose himself to the charge of favoritism and discrimination. In Illinois, where the Land Title Registration Act requires the registration of titles by executors, but allows the court to dispense with the requirement, the dispensation is given as a matter of course, and the provision has become a dead letter.

It follows that this form of unqualified authority is undesirable; the discretion should at least be qualified by making the dispensation dependent upon "special cause," as is done by the English Factory and Workshop Act, 1901, Sec. 32 (3); even then the official should in a general way indicate the special causes for which the permit will be granted.

There is, however, little inducement to question the validity of an unqualified power of this kind, since its invalidity would probably leave the requirement to stand unqualified and not invalidate the entire provision.

Validity of Unregulated Discretion.—If words of simple authority are construed as conferring a discretion, a constitutional question arises on the ground of such discretion being unregulated, or perhaps unqualified and arbitrary.

The nature of an absolutely free discretion is illustrated by the pardoning power, which is exercised by the chief executive without any other than a moral responsibility, or by a power of appointment uncircumscribed by law.

A discretion of this type makes the official in whom it is vested the sole judge of the considerations upon which it should be exercised, and places it in his power to apply different considerations and to reach opposite conclusions with reference to two precisely similar cases submitted to his decision.

It follows that if the matter submitted to the official discretion is one capable of legislative regulation, the vesting of a free discretion may be looked upon as a delegation of legislative power, and that if individual rights depend upon the exercise of such discretion, there is an opportunity for arbitrary discrimination which may raise the issue of the equal protection of the law.

The validity of statutes or ordinances subjecting private right or privilege to unregulated discretion has therefore often been contested upon constitutional principles; and it will be noted that the latter of the two objections mentioned may be raised under the Fourteenth Amendment and may therefore be carried to the Federal Supreme Court.

In a considerable number of cases the objection has been held to be well taken, and the statute or ordinance declared invalid.

It has thus been held that absolute discretion cannot be given to boards of health or other boards or officers to grant or withhold permission to conduct laundries (*re* Woh Lee, 26 Fed. 471), to sell proprietary medicines (Noel *vs.* People, 187 Ill. 587), or to exempt from the duty of installing gas safety appliances (Sheldon *vs.* Hoyne, 103 N. E. 1021), or to revoke permits for keeping steam engines (Baltimore *vs.* Radecke, 49 Md. 217); that the right to erect buildings (Newton *vs.* Belger, 143 Mass. 598, 10 H. B. 464; State *vs.* Tenant, 110 N. O. 609; 15 L. R. A. 423), to run a hackney coach (State *vs.* Fiske, 9 R. I. 94), to drive traffic vehicles on boulevards (Cicero Lumber Co. *vs.* Cicero, 176 Ill. 9), to store inflammable oil (Richmond *vs.* Dudley, 129 Ind. 112, 13 L. R. A. 583), or pressed hay (Mayor of Hudson *vs.* Thorne, 7 Paige (N. Y.) 261), to establish a slaughter house (Barthet *vs.* New Orleans, 24 Fed. Rep. 563), or a hospital (Bessonies *vs.* Indianapolis, 71 Ind. 189), or a dairy (State *vs.* Mahner, 43 La. Ann. 496, 9 Sou. Rep. 480), or a laundry (Yick Wo *vs.* Hopkins, 118 U. S. 356), or a furnace or stationary steam engine (Richmond *vs.* Model Steam Laundry, 69 S. E. 932), cannot be made to depend upon the permission granted by the common council, still less upon the permission of an administrative officer (Sioux Falls *vs.* Kirby, 6 S. D. 62; 25 L. R. A. 621), without further regulation of the conditions determining the grant or refusal of the license. So, with regard to the use of public places, an ordinance was declared void which required for parades the consent of the mayor; it was admitted that it might be proper to confine parades to certain streets or certain hours, or require previous notice to the police; but it was held that general conditions must be fixed by by-laws, and that to commit an arbitrary power to the mayor was unreasonable (Anderson *vs.* Welling-

ton, 40 Kan. 173; 2 L. R. A. 110). In Illinois an ordinance was held to be invalid which prohibited parades, processions and open-air meetings without a permit from the police department, such permit to designate the route to be followed and to issue without fee (*Chicago vs. Trotter*, 136 Ill. 430). The decision went partly on the ground that the ordinance was an unauthorized delegation of power by the common council to the police department, partly that it gave the authorities a power to discriminate. In Michigan an ordinance making all processions with music illegal without the consent of the mayor and council, and requiring those authorized to conform to the directions of the mayor and chief of police, under heavy penalties, was held to be invalid because it left the matter to an irregular official discretion, when, if regulated at all, it must be regulated by permanent legal provisions operating generally and impartially (*Matter of Frazee*, 63 Mich. 396). A similar decision was made in Wisconsin (*State ex rel. Garrabad vs. Dering*, 84 Wis. 585), where, however, the ordinance discriminated in favor of certain kinds of processions.

The theory upon which these decisions proceed is either that a power of regulation delegated by the legislature must be exercised by the body in which it is vested and may not be further delegated by it, or that an ordinance which leaves everything to the circumstances of the individual case is in reality no regulation and unreasonable by virtue of its looseness (*Newton vs. Belger*, 143 Mass. 598), or that the uncontrolled discretion gives opportunity for arbitrary discrimination and thus violates the principle of the equal protection of the laws (*Yick Wo vs. Hopkins*, 118 U. S. 356). Where the statute vests the discretion directly in the administrative authority there may also be an objection on the ground that the legislature has abdicated an authority which under the constitution it must exercise itself (*Noel vs. People*, 187 Ill. 587, 58 N. E. 616).

There are, however, decisions of a contrary tenor. Thus ordinances have been sustained which without further specification of conditions require a permit for the erection of wooden buildings within the fire limits (*Hine vs. New Haven*, 40 Conn. 478; *ex parte Fiske*, 72 Cal. 125), or for the keeping of swine in a town (*Quincy vs. Kennard*, 151 Mass. 563, 24 N. E. 860),

or of a stock pen within 300 feet of a hotel (*ex parte* Broussard, 169 S. W. 660, Texas), or for the establishment of a dairy stable in the city limits (St. Louis *vs.* Fisher, 167 Mo. 654, 67 S. W. 872; 194 U. S. 361), or for conducting a hotel or lodging house (Cutsinger *vs.* Atlanta, 83 S. E 263), or for the beating of drums in the streets (*re* Flaherty, 105 Cal. 558, 27 L. R. A. 529), or for the moving of a building through the streets (Wilson *vs.* Eureka City, 173 U. S. 32), or even for the erection of any building without further regulation (Commissioners of Easton *vs.* Covey, 74 Md. 262). In South Carolina the Supreme Court declined to consider in a mandamus proceeding the constitutionality of a law giving the State Board of Agriculture power to grant or refuse licenses for the mining of phosphate, but intimated that the Fourteenth Amendment did not apply to the case (Port Royal Mining Co. *vs.* Hagood, 30 S. C. 519; 3 L. R. A. 841). The Supreme Court of Massachusetts has held that the legislature may permit the use of public places for purposes of parades or public speaking upon such terms as it pleases, and may leave the permit to the discretion of the mayor or board of police; and this view has been confirmed by the United States Supreme Court (Commonwealth *vs.* Plaisted, 148 Mass. 375, 2 L. R. A. 142; Commonwealth *vs.* Davis, 162 Mass. 510; Davis *vs.* Massachusetts, 167 U. S. 43).

The decisions sustaining discretionary power without further regulation are based partly upon the free exercise of proprietary control, partly upon the theory that a power to prohibit includes the power to permit upon any terms deemed expedient, partly upon the ground that, though the discretion is unregulated, it is intended to be reasonably or judicially, and not arbitrarily, exercised, and that the courts can afford relief against an abuse of discretion (*ex parte* Broussard, 169 S. W. 660). Neither of the two theories justifies a power of arbitrary discrimination where a matter is simply subject to regulation and not to prohibition, and this is recognized by the Supreme Court of Massachusetts (Neston *vs.* Belger, 143 Mass. 598).

So, also, the Supreme Court of Michigan, which in the Frazee case, long regarded as the leading case upon the point now under discussion, had held an unregulated discretion in the

mayor to allow or disallow parades to be invalid, upholds a free discretion as to permitting or forbidding addresses on public places (*Love vs. Judge of Records Court of Detroit (Phelan)*, 128 Mich. 545, 55 L. R. A. 618), distinguishing the former case as one concerning the question "who may travel on a public highway," while the making of addresses in public places may be prohibited.

Reasonable Discretion.—The construction of an unqualified licensing power as one to be reasonably exercised will mean that in a proper case its exercise may become mandatory. In the most conspicuous case of the grant of such a power in recent legislation, the power of the Interstate Commerce Commission to relieve from the long and short haul clause, under the Act of 1910, the commerce court was of the opinion that the commission would be under a duty to grant such exemptions whenever on investigation it should find that no violation of any section of the act would thereby be involved. (*A. T. & St. Fe R. Co. vs. U. S.*, 191 Fed. 855, 860); but the Supreme Court did not express itself definitely upon this subject (234 U. S. 548).

"May" as "Shall."—It is often said that when an official power is granted for the benefit of a third party, "may" will be construed as "shall" (see Sutherland, *Statutory Construction*, Secs. 634-640). But the cases in which that construction is applied will, in the nature of things, be cases in which the circumstances for the exercise of the power are specified with reasonable fulness (see, *e. g.*, *McLeod vs. Scott*, 21 Oreg. 94), not cases in which the power is entirely unqualified; for if without reference to specified considerations or conditions the grant of the license permit, consent or approval were simply mandatory, the statutory requirement of official action would be reduced either to a meaningless formality or to a certificate that the official in question had been properly notified. If the latter was the legislative intent it would have been easy to express it in appropriate form, and generally such intent would be quite inconsistent with the purpose of the provision.

Words Emphasizing Discretion.—In view of the numerous decisions against the validity of unregulated discretion, it is safer in drafting a statute, still more in drafting an ordinance, to avoid the use of terms which involve the grant of such discretion.

Still more objectionable is, of course, the use of such terms as "at will," or "at pleasure" (Illinois Military Code, Art. 23, Sec. 2; organizations require consent of governor which may be withdrawn at pleasure); or "at their option" (the latter upheld in connection with liquor licenses, 89 N. C. 175). On the other hand, the objection, if any, is not removed by simply adding "if deemed expedient" (10 S. W. 465, Kentucky); or "if he sees fit" (so in the English act regarding censorship of plays, 10 Geo. II, c. 28 in the present act; "for preservation of good manners, decorum or public peace").

Terms Qualifying Discretion.—Terms qualifying discretion in a very general way are found in acts for the licensing of the sale of intoxicating liquors:

"may grant licenses to such persons as they shall deem fit and proper" (England, 1828).

"shall decide upon all questions touching the granting of any license, or the fitness of the person, or the house intended to be kept" (England, 1872).

"may at any time refuse to issue a license to a person whom it considers unfit" (Mass. R. L. 100, Sec. 16).

"may grant licenses to keep so many dramshops as they may think the public good requires (Ill. R. St. Dramshops, Sec. 2).

"may grant a license if of opinion that the applicant is sober and of good character and will probably keep a house orderly, useful and such as the law requires" (Virginia, see 11 Gratt. 655).

"it shall be lawful to grant licenses to persons of good moral character" (Arkansas, see 43 Ark. 42).

The discretion is narrowed if the statute expressly or by implication refers the exercise of the discretion to proof rather than to opinion, *e. g.*, a person is not to receive a license until he proves that he sustains a good moral character (Maine Act, 1846, Ch. 200, Sec. 4); for in that case uncontroverted evidence would probably be held to be conclusive upon the licensing official.

Qualifying Terms as Fixing Scope of Discretion.—A reference to suitability, competency, sufficiency or adequacy, reputability or character, need, danger, etc., not merely indicates an intent that the power is not to be exercised in the absence of the specified condition, but may further confine the exercise of the discretion to the ascertainment and determination of the condition answering the descriptive term. "May grant a license to a fit person" would under this latter construction, mean: "shall grant a license to a

person whom in his discretion he judges to be fit." While this is probably the normal rule, it is not a hard and fast rule.

The consequence of confining the discretion in the manner indicated is that the licensing official has practically only a power of rejection, while under a more liberal construction he would have a power of selection among the persons properly qualified. That would render the license restrictive, and would represent a legislative policy which the courts will not readily assume, unless the licensed practice is one barely tolerated.

Vague Qualifying Terms.—Qualifying terms of a very general scope, while they indicate at least a legislative intent that the discretion shall not be exercised arbitrarily, afford little guidance to the official, and little protection to the private interest affected; but their validity has been rarely questioned. If it has been held in Ohio that "trustworthiness" and "competence" are not sufficiently precise terms to remove the constitutional objection of undefined discretion in connection with the power to license stationary engineers (66 Oh. St. 249), it should be pointed out on the other hand that similar terms have passed unquestioned in connection with the licensing of pilots under federal legislation. And a decision of the Supreme Court of Indiana (*Ensley vs. State*, 172 Ind. 198; 88 N. E. 62, 1909) to the effect that a liquor license ordinance merely referring to "fitness" does not prescribe a rule under which all applicants may stand on the same footing, enforces a standard of strictness with regard to the vesting of discretion that has rarely been observed in connection with the licensing of the sale of intoxicating liquors. In Connecticut a power cannot be validly delegated to determine who are proper persons to engage in a "temporary or transient business" (*St. vs. Conlon*, 65 Conn. 478); and in Tennessee the authority to make deductions from terms of imprisonment "for good conduct" is held to constitute arbitrary discretion (*Fite vs. State*, 88 S. W. 941).

While decisions like these may be criticized as being too strict, they contain a warning that it is not always safe to use the common perfunctory phrases in qualifying an official discretion. The Supreme Court of the United States has, however, sustained a licensing power, which submitted the questions of good character, reputation and suitability to official discretion (*Gundling vs. Chicago*, 177 U. S. 183).

Modes of Qualifying Discretion.—In carefully framed statutes it is common to specify the principal conditions that must be fulfilled in order that the official action may be taken. These conditions may be objectively ascertainable facts (see as to this, *Stretch vs. State Board Medical Examiners* (New Jersey), 95 Atl. 623), which narrow the scope of discretion, or matters of judgment which direct the exercise of discretion primarily to certain points, or it may be that objective requirements are so qualified as to demand the exercise of judgment and discretion on incidental points (petition or consent of *reputable* freeholder; filing of *sufficient* bond, etc.).

The form may be that the statute requires the taking of certain steps, or the existence or showing of certain facts, upon the basis of which the official action is to be taken. If the statute then says that the action shall be thereupon taken, it is reasonably clear that the determination of the specified points was intended to exhaust the discretion; if the statute continues, that thereupon the action may in the discretion of the authority be taken, it would seem to be reasonably clear that the discretion was not intended to be exhausted; while if it simply says that thereupon the action may be taken, there would seem to be a case for construing "may" as "shall."

The draftsman who wishes to leave a further discretion open should, therefore, emphasize the intent by express terms of discretion.

Peculiarities of Judicial Construction.—In one case (*State vs. Justices*, 15 Ga. 408) where the statute provided that the licensing authorities shall consider the convenience of the place, and having regard to the ability to keep good and sufficient accommodation, may, at their discretion, grant a license, the court, expressing its regret at having to make such a decision, held that the discretion was confined to the two points specified; but this seems an extreme decision, and it is hardly possible for a draftsman to guard against such construction without appearing to fight windmills.

It is also practically impossible to guard by drafting devices against a construction like the following: An ordinance of the City of Chicago provided: "The mayor . . . shall from time to time grant licenses . . . to persons who shall apply to him in writing therefor and shall furnish evidence satisfying him of

their good character. Each applicant shall execute . . . a bond. . . . No application for a license shall be considered unless such bond shall have been filed. . . ."

The ordinance contained no provision vesting any discretion in the mayor regarding the location of the licensed saloon. Upon an application for a license where the applicant concededly complied with every requirement of the ordinance the mayor refused the application solely on account of the proximity of the place proposed for the dramshop to a school; and the Supreme Court, reversing the Appellate Court, sustained his refusal, holding that the mayor in such a case may reasonably exercise a discretionary power, unless expressly restricted by the language of the ordinance (*Harrison vs. People*, 223 Ill. 150). A similar decision had been rendered in Utah (7 Utah 14).

It is difficult to account for such a construction on other than pure grounds of expediency.

Judicial Recognition of Residual Discretion.—The liquor law of Pennsylvania controls the discretion of licensing authorities by rather elaborate provisions. The licensing authority is the court of quarter sessions, and the published reports of county court decisions permit an insight into the considerations upon which discretion is exercised which we do not obtain where discretion is vested in administrative authorities that are not in the habit of reasoning out the motives for their decisions, or at least not of writing down their motives for publication.

The act of Pennsylvania contains a considerable number of prohibitive provisions: liquor not to be sold at retail in quantities exceeding one quart, or by others than citizens; keepers of groceries not to sell by less measure than one quart; liquors not to be peddled; liquors not to be sold in connection with theatres or other places of amusement; not to be sold except on condition that females shall not be employed. There is the usual requirement of a bond. The license is granted upon a verified petition, accompanied by a certificate of 12 freeholders to the effect that they know the petitioner and that the statements in the petition are true. The petition must state among other things that no other person is interested in the proposed business, and that no license held by the petitioner has been revoked during the preceding year. So far the conditions for

the granting of the license are mandatory or prohibitory; but there remains an element of discretion. The law makes it unlawful to keep a house, etc., for the retail sale of liquor except a license therefor shall have been previously obtained, and provides that licenses shall be granted only to persons of temperate habits and good moral character. The court of quarter sessions shall hear petitions, in addition to that of the applicant, in favor of and in remonstrance against the applicant, and in all cases shall refuse the same whenever in the opinion of the court, having due regard to the number and character of the petitioners for and against the application, such license is not necessary for the accommodation of the public and entertainment of strangers or travellers, or that the applicant is not a fit person to whom the license should be granted.

Under this law it is held that the court cannot evade the responsibility of forming its own opinion, though it may give proper weight to the petitions, since otherwise there would practically be local option (*Pet. of Sparrows*, 138 Pa. St. 116; *Gross' License*, 161 Pa. St. 344), and a license was held to be legally refused, though no petitioner appeared to remonstrate against it (57 Pa. Super. 160).

The probability that "may" will be construed as "shall" is increased in proportion as the statute takes care to specify conditions for the exercise of the power, because thereby the range of discretion is correspondingly reduced. It is, however, also true that the word "may" always leaves it open to the courts to concede a discretion, where that seems desirable from the point of view of public policy. This is well illustrated by a recent English case. The Cinematograph Act of 1909 forbids exhibitions where inflammable films are used unless regulations for securing safety are complied with, or elsewhere than in licensed premises. It further provides that the county council may grant licenses to such persons as they think fit to use the premises specified in the license on such terms and conditions and under such restrictions as, subject to the regulations, the council may by the license determine. The court upheld the action of the London County Council in refusing the renewal of a license to an English company for the sole reason that one-half of the directors and a majority of the preference share-

holders were alien enemies. It found in the act the grant of a discretion outside of the matters particularly specified, and a legitimate exercise of this discretion on the basis of the nationality of a portion of the owners (*Rex vs. London County Council*, 113 L. T. R. 118).

Tendency to Recognize Residual Discretion.—A similar recognition of a "residual" discretion is found in the leading English case of *Sharp vs. Wakefield* (22 Q. B. D. 239, 21 Q. B. D. 66, 1891 A. C. 173). Under the English Licensing Act of 1828 (9 Geo. IV, c. 61) the justices may on the general licensing day grant licenses to such persons as they shall deem fit and proper (Sec. 1), the majority of the justices present deciding upon all questions touching the granting, confirming, withholding or transferring of any license, the fitness of the person and of the house intended to be kept (Sec. 9). This provision was held to confer a wide discretion, extending to a consideration of the needs of the neighborhood, and applying to the renewal as well as to the original grant of a license. The renewal of licenses was subsequently dealt with by supplementary acts of 1872 and 1874. The Act of 1872 (35 and 36 Vict., c. 94, Sec. 42) provided that the applicant for a renewal need not attend in person unless required by the justices to do so; that no objection to renewal should be entertained unless written notice of the intention to oppose had been served seven days before the meeting, and that evidence with respect to the renewal should be given on oath; but it added, "subject as aforesaid licenses shall be renewed, and the power and discretion of justices relative to such renewal shall be exercised as heretofore." The Act of 1874 (Sec. 26), in addition, directed that the applicant for a renewal should not be required to attend save for some special cause personal to the licensed person to whom such requisition is sent.

A renewal of the license in the case in question was refused for no reason of personal unfitness, but on the ground of remoteness from police supervision and the character and necessities of the locality and the neighborhood of the inn. It was contended on behalf of the applicant that the entire effect of the provisions cited was to confine the discretion of the licensing justices to the question of personal fitness, but the courts in all

three stages sustained the refusal. Chief reliance was placed upon the words quoted from the Act of 1872 expressly saving the discretion theretofore exercised, and the reference in the Act of 1874 to special causes personal to the person licensed was construed to mean causes in which the applicant is personally interested and not merely interested as one of the general body of licensed persons.

The interest of the decision lies in the fact that an express saving of discretion was permitted to overcome the strong implication from a course of legislation, which clearly recognized the equitable claim to renewal. And the strength of this equity finally led to the Licensing Act of 1904, which, under similar circumstances of refusal of a renewal, granted to the aggrieved person a right to compensation.

Elastic Criteria.—If it is the purpose to keep discretion within narrow bounds, it is above all necessary to avoid criteria of decision which by their very nature imply a wide latitude of judgment. An ordinance of the City of Chicago prohibited parades, processions, or open-air meetings without permit from the police department, to be issued without fee, and designating the route to be followed. The Supreme Court of Illinois interpreted this as creating an unregulated discretion and declared the ordinance invalid (*Chicago vs. Trotter*, 136 Ill. 430). The present ordinance (Municipal Code, Sec. 2128) provides that the chief of police shall issue the permit without fee or charge if he finds that such parade is not to be held for any unlawful purpose and will not tend to breach of peace or unnecessarily interfere with the public use of streets and the quiet of the inhabitants. This ordinance does not appear to have been questioned. Yet a discretion to determine whether a parade will tend to breach of the peace is extremely susceptible to political abuse, or at least to apprehensions controlled by prejudice, while the unqualified terms of the original ordinance might easily have been interpreted as merely calling for a ministerial function. The discretion thus seems to have been widened rather than narrowed.

Elimination of Discretion by New York Liquor Tax Law.—The most elaborate legislative provision for the entire elimina-

tion of discretion is found in the Liquor Tax Law of New York. The substitution of a ministerial act for a discretionary power is marked by the use of the term "liquor tax certificate" for the term "license."

The law requires of the person proposing to engage in the business a signed and sworn statement upon an official blank. The statement gives the name, age, residence, citizenship of the applicant and name and residence of every person who will have an interest in the traffic; the location of the premises; which of various specified classes of the business it is proposed to conduct, and in connection with what other business, if any; that the applicant has not been convicted of felony, nor within three years of a violation of the liquor law, does not carry on any forbidden traffic, nor is within any of the prohibitions of the law; the proximity of dwelling houses, school houses and churches; whether traffic in liquor has been carried on before on premises, whether occupied as a hotel, whether a liquor tax certificate was previously revoked or forfeited; a consent in writing of the owner of the property; consents of owners of near-by dwellings; if a hotel, that all requirements of the law regarding hotels have been complied with. He must also file a bond conditioned that there is no material false statement in the application statement, that there will be no gambling, that the premises will not become disorderly, that no provisions of the liquor law will be violated, and that all fines and judgments will be paid. There are full provisions as to sureties, and a reference to official approval only in case the surety is a surety corporation, and the approval may then be withheld only if the corporation is of questionable solvency or has defaulted in payment of a judgment upon a similar bond.

The method of the law is thus to prescribe specifically and exhaustively all matters which ordinarily form the subject of the consideration in exercising discretion and to have the application show upon its face that all the conditions prescribed are complied with.

Certificate Instead of License.—In many cases there is no legislative purpose to create an official discretionary power, but merely to assure the official ascertainment of facts which are made prerequisite to the exercise of a right. It might be better to use the

term certificate exclusively in these cases; but the usage of statutory language does not strictly differentiate on this basis. The usual marriage license is thus in the nature of a certificate; but it is called a license, because historically it is derived from the bishop's license to dispense with the banns, and because it serves perhaps less as an authority to the parties to marry each other, than as an authority to the minister or other officiating person to perform the marriage ceremony.

In the case of certificates, the main stress should be laid upon specifying the manner in which the requisite facts are to be ascertained. This matter has been most carefully elaborated in connection with age and school certificates for children employed in industry, and the provisions of child labor laws may serve as models where they apply.

The persons authorized to issue certificates may be other than public officers, so particularly parochial or other private school authorities, and physicians.

If certificates are to be trustworthy, the certifying persons should be disinterested. The British Factory Workshop Act, 1901, Secs. 122-124, has full provisions regarding certifying surgeons.

The party requiring the certificate should be placed in the position of being able to demand one if the requisite facts are present. This means that the persons authorized to certify should be required to certify upon the payment of a reasonable fee, to be fixed by the statute. The Wisconsin act requiring health certificates for men as a condition precedent to the right to marry, provided that the fee for examination and certificate shall not exceed three dollars, but did not impose upon physicians the obligation to make the examination or give the certificate. In the case sustaining the act (*Peterson vs. Widule*, 147 N. W. 966) it appeared that four physicians had refused to make the examination for so small a fee, but the point was not noticed in the opinion.

Legislative Tendencies.—A study of the course of legislation and of its judicial construction clearly reveals certain tendencies in connection with the grant of licensing powers:

1. As a subject becomes more developed and better understood, and as the interests affected succeed in impressing themselves more favorably upon the attention of the legislator, the conditions cir-

cumscribing the private right will be more and more clearly specified, and the range and scope of official discretion will be correspondingly narrowed. Very loose and general language is an indication that standards are unmaturing or that the legislature has given little consideration to the details of the problem.

2. At the same time there seems to be an unwillingness to take away the last remnant of discretion. In some way, whether by retaining words of permission rather than of command, or by express general savings, a door is left open for the application of unforeseen considerations of public policy, and the courts will seize upon any phrase that may seem to justify the exercise of residual discretion in cases in which they believe that the public welfare requires restraint upon the liberty of private action, while, on the other hand, they will hold the exercise of the official power couched in the same terms to be mandatory, where the public welfare does not seem to them to demand restraints in addition to those clearly specified.

The careful draftsman will under all circumstances seek to avoid loose and vague language; but he should not make the official action clearly and unmistakably mandatory, unless he is satisfied that that is the desired policy.

Illustration of Tendency to Circumscribe Discretion.—Draftsmen should examine from this point of view the history of liquor legislation in New York down to the Raines law of 1896, which entirely eliminated the element of discretion in the grant of liquor licenses, substituting a liquor tax certificate.

The increasing care with which the issue of certificates is hedged about is particularly exemplified in the legislation regarding child labor certificates (see New York Labor Law, Secs. 70-75).

The New York Labor Law affords a number of illustrations of the tendency to circumscribe and reduce discretion.

Note, *e. g.*, the provisions of the Labor Law of New York (Secs. 169, 171) prohibiting certain arrangements and working conditions unless permission is first obtained from a designated official, and adding that permission *shall* be granted unless it appears that proper sanitary conditions do not exist; or the provision of the same law (Sec. 77) to the effect that in a factory where, owing to the nature of the work, it is practically impossible to fix hours of labor weekly in advance, the commissioner of labor, upon a

proper application stating facts showing the necessity therefor, *shall* grant a permit dispensing with the notice upon condition that the daily hours of labor be posted, etc.

Discretion is also reduced when an unqualified mandatory power is changed into a qualified dispensing power.

Compare, *e. g.*, Sec. 88 of the Labor Law of New York as it stood in 1911, and as it stands now. It formerly required that water closets be maintained inside a factory whenever practicable and in all cases when required by the commissioner of labor, thus leaving the primary judgment with the owner, and leaving the requirement practically dependent upon official mandatory action, which in the nature of things would not as a rule be forthcoming. Now the act requires that all water closets shall be maintained inside the factory, except where, in the opinion of the labor commission, it is impracticable to do so. Thus there is a primary duty, performance of which is excused only by the positive action of the official which, in its turn, is dependent upon proof of objective conditions. Similarly, it is provided with regard to tenant factories (Sec. 94) that outdoor water closets shall only be permitted where the commissioner of labor shall decide that they are necessary or preferable, and they shall then be provided in all respects in accordance with his directions.

Opposite Tendency.—But this rule that discretion tends to become more circumscribed is not universal; the tendency presupposes that strong interests will be prejudicially affected by arbitrary power. In the case of licenses required only for concerns to be newly established, those already in existence may look rather with favor upon difficulties placed in the path of newcomers. There may likewise be no opposition to wide administrative power in dealing with foreign interests. This is reflected in New York legislation. Thus the superintendent of insurance may refuse to issue a certificate for doing business in the state to a foreign corporation, if in his judgment such refusal will best promote the interests of the people of the state—a truly legislative discretion.

New York also makes the right to establish a bank dependent upon the judgment of an administrative official, whether the character and general fitness of the stockholders are such as to command confidence, and whether public convenience and advantage

will be promoted (Banking Law, Sec. 63), and Illinois, in 1907, amended the banking law of the state by granting a similar discretion to withhold the certificate when the official is not satisfied as to the personal character and standing of the officers or directors elected or appointed. This should be compared with the National Bank Act (U. S. R. St., Sec. 5169), which makes it the duty of the comptroller to grant the certificate when the association is lawfully entitled to commence business and authorizes the withholding of the certificate only when there is reason to suppose that the association is formed for other than legal purposes.

New York is equally emphatic in the bestowal of discretionary power in connection with the recent regulation of the business of private banking; for after elaborate requirements in connection with the application and as to bond or other security, the official "may in his discretion approve or disapprove the application" (Laws 1910, c. 348), and this provision was copied by Pennsylvania in an act upon the same subject in 1911 (June 19).

With regard to foreign banks, on the other hand, the superintendent is required to issue the license, if he is satisfied that the corporation may be safely permitted to conduct the business within the state (1911, c. 772), and the Act of 1913 (c. 579) for the regulation of the business of loaning small sums of money simply directs the issue of the license where the proper application (accompanied by bond, etc.) has been received.

German Practice.—The German Trade Code pursues with regard to licensing powers a clearly marked policy in the direction of circumscribing discretion. This is shown by the following provisions:

SEC. 30. A license is required for private hospitals and asylums. It may be refused only (a) if there are facts indicating the unreliability of the manager with regard to the conduct of the institution; (b) if the plans presented do not satisfy sanitary or other technical requirements; (c) if only a part of a building is to be used and the institution will seriously prejudice other occupants of the building; (d) if the institution is intended for persons affected with contagious diseases or insanity, and its location will seriously prejudice neighboring owners.

SEC. 32. Theatrical managers require a license. The license shall be refused if the applicant cannot show that he has the means

to carry on the enterprise, or if the authority satisfies himself on the basis of facts, that the applicant lacks the requisite responsibility in moral, artistic and financial respects.

SEC. 33. A license is required for taverns or dramshops, or the traffic in spirituous liquors. The license may be refused only: (1) if facts are shown against the applicant justifying the suspicion that the business is to be used for gambling, immorality or the concealment of crime; (2) if the place designated for the business by reason of its arrangement or location does not answer police requirements.

SEC. 33a. A license is required for the professional arrangement of public recitals or exhibitions not serving higher interests of art or science, or for the letting of halls, etc., for such purposes. The license may be refused only: (1) if facts exist against the applicant justifying the suspicion that the exhibitions will contravene the laws or good morals; (2) if the place designated by reason of its arrangement or location does not answer police requirements; (3) if a number of persons sufficiently large for the needs of the locality have already been licensed.

SEC. 33b. A local police license is required for musical performances or shows to be exhibited from house to house or in public places.

It will be noted that in each case except that of the peripatetic performer (whose calling, like that of a peddler, seems to be regarded as liable to become a nuisance), the law is careful to specify the grounds of refusal, and, where these concern matters of opinion, insists upon the proof of facts justifying the opinion.

In connection with this last point, reference should also be made to the provision of the Prussian administrative code (Sec. 127) allowing an appeal to the administrative court where it is alleged that the facts did not exist which would have justified the issuing of an administrative order, whereas no appeal lies to a court where the administrative action is discretionary. The insistence upon facts as a justification of the refusal of a license thus renders the refusal appealable.

Formal and Procedural Detail.—The details of provisions regarding licensing and certifying powers necessarily vary according to the particular subject matter.

Licensing powers have perhaps been most fully regulated in connection with the liquor traffic, and certifying powers in connection with the employment of children.

There are also a number of recent acts for the regulation of employment agencies, private bankers, etc., which have carefully drawn licensing provisions.

For licensing on the basis of professional qualification, medical acts are typical.

The following points may require particular attention:

(a) *Manner and Form of Application for Licenses.*—Statutes do not always or even commonly contain provisions regarding the manner of applying for a license, and in cases in which applications issue as a matter of course an application in any form may perhaps be sufficient. Where the importance of the subject matter justifies the requirement of a written application, uniformity with regard to the same is obviously desirable, and some provision should be made accordingly.

The licensing authority may be authorized to prescribe details of form: "shall make application in such form as shall be prescribed by" and it may then be also advantageously required that the application shall be made on blank forms to be furnished by the same authority, and such a provision is common.

As regards statements required to be contained in the application: where the licensing authority is vested with discretion, that discretion may, it seems, be exercised by requiring statements upon the basis of which the official judgment is to be formed, and consequently a power to make a general regulation to that effect may be implied; but only to the extent that the fact with regard to which information is required is a relevant and legitimate factor in the exercise of the discretion. An explicit provision giving power to make such regulation is, however, preferable.

If it is intended to circumscribe discretion by the requirement of certain qualifications, it may be well to provide that the application contain a statement of these qualifications.

The New York Liquor Tax Law, which eliminates all discretion from the grant of the right to sell liquor, prescribes with the utmost fulness all the statements that must be made upon

application for a liquor tax certificate, etc., and Sec. 15 of the act may be advantageously consulted for the various safeguards and precautions that serve as a substitute for the grant of discretionary official power in connection with this particular business.

Thus, in place of the usual requirement of good character, there is required a statement that the applicant has not been convicted of a felony, nor within three years last past of a violation of the liquor law, that he does not carry on any traffic or occupation in violation of law, and is not within any of the prohibitions of the chapter. In like manner the application must state all relevant facts as to location, consents, etc.

The absence of official discretion is emphasized by a provision in Sec. 17 of the act to the effect that the liquor tax certificate must be issued if the application is found correct in form and does not show on its face that the applicant is prohibited from trafficking in liquor.

Provision for the publication of the application is not common. An example is found in the English Wine and Barhouse Act, 1869, Sec. 7.

(b) *Provision for Rescinding License or Certificate.*—The Liquor Tax Law of New York (Sec. 27) permits the certificate to be revoked, if material statements in the application were false, or if the holder of the certificate was not for any reason entitled to receive or hold the same. The revocation proceeding is judicial and is fully regulated.

A provision for rescinding a license obtained on false representations is desirable, since the ordinary powers of revocation do not cover the case, and since there is no inherent administrative rescinding power nor any clear available judicial remedy.

(c) *A Time Limit for Official Action upon the Application.*—See, e. g., Illinois act relating to private employment agencies, Sec. 1: "The State Board of Labor Commissioners shall act upon such application within 30 days from the time of such application."

Where it is merely a question of approving building plans or the like, English statutes contain the further provision that if within the period fixed there is no official action, it signifies approval (10 and 11 Vict., c. 34, Sec. 111; Scotch Public Health Act, 1897, Sec. 107).

A similar provision in case of an application for a license might appear too drastic; the ordinary remedies (*mandamus*) must be relied upon to enforce the taking of appropriate official action.

The English Factory and Workshop Act, 1901, provides (Sec. 66 (10) that where a certificate is refused the reasons for the refusal shall, if required, be given in writing and signed.

(d) If it is not intended that the license is to remain in force indefinitely (as in the case of some professional licenses), the period of its life should be indicated in the statute; in some jurisdictions or with regard to some subject matters it is also customary to provide that all licenses shall expire on the same date. The following are illustrations of this practice: Pennsylvania. *Oleomargarine*. Sec. 4. All licenses under this act shall expire on December 31, but licenses may be granted to commence on the first day of any month for the remainder of a year upon the payment of a proportionate part of the annual license fee. *Scotch Public Health Act*. Sec. 33. A license shall expire on such day in every year as the local authority fix, and when a license is first granted shall expire on the day so fixed, which, secondly, occurs after the grant of the license.

(e) *Relaxing Formalities in Case of Renewal*.—In case of temporary licenses it may be proper to relax formalities in connection with application, if the application is for a renewal. Thus in England the requirement of the publication of the notice of application for beer house licenses is waived in case of renewal (Act of 1869, Sec. 7). With regard to liquor licenses in general, the English Act of 1872 (35 and 36 Vict., c. 94, Sec. 42) waives the personal appearance of the applicant unless expressly required by the justices, and an additional provision made in 1874 limits such requirement of personal attendance to cases of some special cause personal to the applicant (see *Sharp vs. Wakefield*, 1891, A. C. 173); moreover, no objection to a renewal is entertained unless seven days' written notice has been served in advance, and evidence with respect to renewal must be given on oath.

Renewal provisions are always so worded as to make it clear that professional qualification tests, if any, are exacted only upon the first or original application.

(f) *Evidence upon Which Certificates Are to be Issued.*—Certificates being provided for in order to ascertain and authenticate officially the existence of facts which are required in the public interest, the statute may prescribe in detail what is to be accepted as satisfactory evidence of the facts. Perhaps the most elaborate provision in that respect is to be found in the New York Labor Law, Sec. 71, which minutely specifies the various methods of proving age and the order in which they may be resorted to, and requires additional precautions if only secondary or inferior evidence of age is available.

The unwillingness to insist upon rigorous tests in connection with certificates is an indication that the policy of the statutory requirement has not established itself firmly or is not taken very seriously.

The so-called Eugenics Law of Wisconsin (requiring health certificates for marriage), when first enacted in 1913, provided for a certificate setting forth that the person is free from certain diseases "so nearly as can be determined by physical examination and by the application of the recognized clinical and laboratory tests of scientific search." The act set forth a form of certificate according to which the physician stated that he had carefully and thoroughly examined the applicant, having applied the recognized clinical and laboratory tests of scientific search. In 1915 the act was amended by adding after the words "scientific search" the words "when in the discretion of the examining physician such clinical and laboratory tests are necessary," and the form of certificate set forth in the act omits any reference to the application of tests. The insistence upon rigorous tests appears to have been found impracticable, and the amendment, whether so intended or not, is likely to result in perfunctory certificates. This tendency seems rather emphasized by reducing the maximum examination fee from three to two dollars.

(g) *Who May Act under a License.*—Special provisions on this point are uncommon, unless implied understandings are to be varied.

A license may be required only to conduct the business as a master or employer (so in New York "master or employing plumber"), in which case it is clear that unlicensed persons may

act as employees or assistants; and the same may be implied from the nature of the business so that, *e. g.*, the license of a liquor seller protects his unlicensed employee, to whom, indeed, the ordinary words used in connection with the business (sale, traffic, etc.) do not apply. (See *State vs. Roseheim*, 80 Conn. 327.)

In the case of a druggist or pharmacist special provisions are usual, *e. g.*, New York Penal Code, Sec. 405: "No person employed in a drug store or apothecary's shop shall prepare a medical prescription unless he has served two years' apprenticeship in such a store or shop, or is a graduate of a medical college of pharmacy, except under the direct supervision of some person possessing one of those qualifications." Mass. R. L., Ch. 76, Sec. 18: The provisions of this section shall not prohibit the employment of apprentices or assistants under the personal supervision of a registered pharmacist. Massachusetts further provides (Ch. 76, Sec. 23): "nor shall any unregistered member of a copartnership be liable to the penalties hereof if he retails, compounds for sale or dispenses for medicinal purposes drugs, medicines, chemicals or poisons only under the personal supervision of a registered pharmacist."

It may, indeed, be necessary to exempt from the professional qualification tests persons who desire to associate themselves with a licensed person in an unprofessional capacity. In New York the provision of the plumbers' registration law, which required registration of every member of a firm and allowed registration only upon proof of competence, was held unconstitutional in respect of a member of a firm who attended only to the financial side of the business (*Schnaier vs. Navarre Hotel Co.*, 182 N. Y. 83, 74 N. E. 561). On the other hand, the provision should not be so framed as to make the licensing of one member of a firm sufficient for the entire firm, without providing that the unlicensed members shall not practice the technical side of the trade independently; a provision lacking this qualification was held unconstitutional in Ohio (*State vs. Gardner*, 58 Ohio St. 599).

Special provision is necessary if it is intended that the licensed business shall be allowed to be carried on by a corporation employing a properly qualified manager. This matter is fully covered by the New York Liquor Tax Law (Sec. 21).

(h) *Transferability*.—If it is proper that licenses should be transferable under certain conditions, provision to that effect should be made, for the rule is that licenses are untransferable (Black, *Intox. Liquors*, Sec. 131). A contingency which deserves special attention is that of a person conducting a licensed business representing a capital value by reason of investment or good will, and not depending entirely upon personal qualification, dying or becoming otherwise incapacitated. Reference may be made to the New York Liquor Tax Law, Sec. 24 (1), and the English Licensing Act, 1828, Sec. 14.

For special safeguards against the transfer of licenses after grounds of forfeiture have been incurred, see New York Liquor Tax Law, Sec. 26.

(i) *Provisions Regarding Place*.—Whether a license is attached to a certain place depends upon the nature of the occupation. The place is usually regarded as material in the case of the sale of liquor to be consumed on the premises; it may also be of importance in case of such vocations as pawnbrokers' shops or employment agencies, or banks. Wherever the place is not a matter of entire indifference the proposed place is generally required to be stated in the application for the license, and—even if the transfer to another place does not require a new application, or the consent of the licensing authority—there should be provision for notice of change of place, with appropriate penalty. (See New York Liquor Tax Law, Sec. 25.)

(j) *Fee*.—The fee should be fixed by statute or ordinance, and not be left to the administrative authority. If the amount is considerable, it may be proper to provide for proportionate fees for fractions of years, for payment in instalments, and for restoration of a proportionate amount in case the enjoyment or exercise of the license is cut short without the fault of the licensee. (See New York Liquor Tax Law, Sec. 24.)

(k) *Conditions Annexed to Licenses*.—An administrative authority has no power to grant a license on conditions without express provision to that effect. (1898, Q. B. 663; 62 N. J. L. 151.)

A power to impose conditions is sometimes granted in England (Licensing Act, 1904, Sec. 4; Alkali Act, 1906, p. 9 (5)); conditions imposed by local authorities on public service companies

are in the nature of special legislation or of contracts, and the sanitary code of the City of New York purports to give the power to the board of health (175 N. Y. 440; 113 App. Div. 377); but in America this is not a common practice, and in so far as it would allow an administrative authority to vary the conditions under which a business may be carried on, from case to case, its validity may be questioned.

(l) *Records and Registers*.—Provisions are appropriate for keeping official records of licenses granted; for requiring the license to exhibit or produce it upon demand, and in proper cases, for posting it in conspicuous places.

See New York Liquor Tax Law, Secs. 12, 19; English Licensing Act, 1872, Sec. 64.

The details of a mechanical nature by which the fact of a license having been issued and remaining in force can be easily ascertained (duplicates for issue and for file, numbering, indices, etc.) should be left to administrative regulation.

Where uniformity is an object (as usually it will be) a provision would be appropriate for the furnishing of blanks by state authorities to local authorities or certifying persons, or at least for giving the state authority the power to prescribe uniform forms. (See New York Labor Law, Sec. 75.)

(m) A statute should leave no doubt as to the consequences of noncompliance with license or certificate requirements.

A penalty will be provided as a matter of course in every case, and ordinarily the provision is so worded that it is clear that neither the compliance with all substantial requirements, nor even the illegal refusal of the license or certificate will excuse action without it; the proper remedy for illegal refusal is an action to compel its issuance, not the disregard of statutory prohibition.

The rule is further, that where a license is required, no cause of action will arise in favor of a person acting without a license, *i. e.*, acts done without the required license are null and void, and it seems to make no difference that the license is required by an ordinance (*Johnston vs. Dahlgren*, 166 N. Y. 354; *Miller vs. Armon*, 145 U. S. 421; *Callini vs. Laborie*, 5 T. R. 243; otherwise perhaps where a mere revenue regulation, *Johnson vs. Hudson*, 11 East. 180; also 88 S. E. 916).

(n) Is a license or certificate conclusive evidence of qualification or of compliance with requirements? It would seem to be where matter of opinion as distinguished from matter of fact is submitted to the judgment of the licensing or certifying authority; as, *e. g.*, in the case of certificates of competency or fitness. On the other hand, where the question is one of objective fact a license or certificate should not operate as a dispensation from legal prohibitions, and should not even excuse from penalties where the falsity of the certificate was known. No one would contend that a license legalizes a bigamous or otherwise prohibited marriage; but the case is not equally clear in case of a liquor license or of a child labor certificate. An express provision may therefore be desirable. Thus the English Factory Act of 1844 (7 and 8 Vict., c. 15) provided that a surgical certificate shall be evidence in the first instance of the age of the person, but shall not protect any person knowing such person to be of less than the age certified.

In cases of particular importance, as in case of a marriage license, it may even be proper to provide that the license contain a provision to the effect that it does not operate as a dispensation. See Proposed Uniform Marriage Law, Sec. 10: "The issue of a license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the license shall contain a statement to that effect."

(o) Penalties should be provided for acting without certificate or license, for making false statements for the purpose of procuring it, for forging it, for issuing it without authority, for refusing to exhibit it where so required, and for misusing it.

THE MEMBERSHIP SITUATION.

SPECIAL COMMUNICATION FROM THE MEMBERSHIP
COMMITTEE.

To the Members of the American Bar Association:

Your Committee on Membership desires very earnestly to call your attention to the fact that, while our total membership is about 10,000 at present, the percentage of the American Bar enrolled as members of this, our profession's splendid national organization—but 7.5 per cent—is far smaller than it should be.

Although the national organization of a great sister profession, the American Medical Association, and which represents only the allopathic school, is handicapped in membership matters by the old and new school divisions in the ranks of physicians, nevertheless more than 26 per cent of *all* physicians in the United States are upon its roll as active members (fellows).

PRESIDENT ROOT STRONGLY URGES INCREASING OUR
MEMBERSHIP.

Our President, Elihu Root, of New York, in a letter recently sent to each member, stated cogent reasons why every member of our organization should press upon the attention of his brother lawyers "*the opportunity and duty*" of becoming members of the American Bar Association *for the public benefit*.

He said—and you are asked to note with care the various points of his clear, concise argument upon the subject:

"The people of our country are called upon to solve many new problems and to face new duties dependent upon conditions of which they are not fully informed and to make most important decisions for which they require education and leadership of opinion. It is plain that the whole world has entered upon a period of re-examination and development of political and juridical systems. Nowhere is this period of development more critical than in the United States.

"In this juncture the highest duty of service to the country rests upon the Bar. Their knowledge, their training, their fitness to lead opinion, should be utilized to the utmost. This duty cannot be effectively performed by lawyers acting singly each by himself. It must be by association. In modern times

it is only by the power of association that the men of any calling exercise their due influence in the community.

"For the performance of this duty a great agency already exists in the American Bar Association, of which you are a member. It has already between nine and ten thousand members. It should have many times that number. Its organization runs into every state. Its members are of every section, of every political party, of every racial inheritance. There are many excellent state and local Bar associations, but the new questions are national, not local.

"It is the American Bar which is called upon to think and to form and lead opinion nationally and not locally. Will you not urge upon your associates at the Bar who are not already members this view of their opportunity and duty and bring them into this great Association for the public benefit?"

RESPONSIBILITY FOR OUR SMALL MEMBERSHIP.

The Association's local councils in the various states, charged by our constitution with the duty of nominating new members, are primarily responsible for the condition of our membership from their respective states. The Vice-President for each state is *ex officio* chairman of the local council for his state, and experience has demonstrated that the activity or inactivity of this group in a given state determines the increase or stagnation of our membership roll for that state, and that the geographic location of the state is of little significance.

For example, Ohio, where the local council has been active as a result of the efforts of the late George R. Young, until recently our beloved Vice-President from that state, has nearly twice as large a percentage of its Bar in the American Bar Association as Indiana, where the local council has long been inactive.

So also, we illustrate by Florida with 12.5 per cent of its Bar in our ranks, by Alabama with 15.6 per cent, and Louisiana with 11.4 per cent, in all of which states the local councils have earnestly worked, in comparison with adjoining states, where the local councils have done little, and find that but 5.8 per cent of the Mississippi Bar is upon our roll, and only 4.8 per cent of the Georgia Bar, notwithstanding that last year our President was from the latter state.

Contrast also the following pairs of *adjoining* states:

	Per cent of Bar in A. B. A.		Per cent of Bar in A. B. A.
Minnesota	10.5	Wyoming	14.5
Iowa	5.	Montana	6.
Wisconsin	10.6	Arizona	9.9
Illinois	6.5	California	4.2
Nevada	14.4	Pennsylvania	11.6
Oregon	4.3	New Jersey	4.5
Idaho	13.5	Nebraska	10.9
Washington	4.4	Kansas	6.8
Vermont	16.7	Arkansas	9.4
New Hampshire	10.8	Oklahoma	3.5

Many similar illustrations could be given. In the last analysis our membership increase from a given state is invariably a measure of the activity of the local council in that state, supplemented of course by such aid as individual members may give in pressing the importance of membership upon the attention of their professional brethren whether on the Bench or at the Bar, and submitting their names, *with their consent*, to the local council for their state that they may be formally nominated and elected. The names and addresses of the local councils are printed on pp. 117 to 124 of the 1915 annual volume.

STATISTICS FROM THE THREE LARGEST STATES.

The most difficult states in which to stimulate membership interest are those with large Bars. The following are the statistical figures for the three states having Bars of over 7000 members:

	Per cent of State Bar in A. B. A.	Total Bar	New members elected since Jan. 1, 1913	Per cent in- crease since Jan. 1, 1913
Pennsylvania	11.6	7,947	543	204.1
New York	8.6	19,292	647	83.2
Illinois	6.5	8,729	98	21.3

STATISTICAL SUMMARY.

As a result of the earnest and painstaking labors of the local councils in several states, 5338 new members were elected from

1 January, 1913 (the date this committee commenced its activities) to 1 January, 1916, as follows:

1913	2,746
1914	2,142
1915	450
	<hr/>
	5,338

During 1913 and 1914 many local councils were exceedingly active; in 1915 very few. The indications are that during 1916 the local councils in several states intend to make this a banner year so far as membership matters are concerned.

A careful analysis of our membership roll as of 1 January, 1916, discloses that after deducting the names of all deceased or dropped for nonpayment of dues and a few scattering resignations, we had on that date a net membership of 9609, of which number more than 53 per cent were elected since 1 January, 1916.

THE FUTURE.

It is to be hoped that President Root's appeal, quoted at p. 488 *supra*, will result in soon placing the national organization of our profession on a par with the American Medical Association with respect to the percentage of the entire profession enrolled as members.

VIEWS OF JUDGES SIMEON E. BALDWIN AND ALTON B. PARKER UPON THE WORK OF THE AMERICAN BAR ASSOCIATION.

Hon. Simeon E. Baldwin, former Chief Justice of the Supreme Court of Connecticut, and lately its Governor, has clearly summed up the work of the Association as follows:

"The American Bar Association seems to me to present great attractions to any member of the Bar who has a desire to advance the standards of our profession or to improve our methods of judicial procedure.

"It has an unquestionable and unquestioned position as the only body representing the American Bar as a whole.

"As such it has already accomplished large results in both the fields above described. Among these may be particularly mentioned:

"The general improvement of legal education;

"The compilation of a full and reasonable code of legal ethics;

- "The creation of the Circuit Court of Appeals;
- "The establishment of the annual Conference of Commissioners on Uniform Legislation from the various states;
- "The contribution of important aid towards securing the general adoption of the leading bills framed by the Conference; and

"Awakening a new interest in the science of comparative law."¹

"We want no additions to our membership except of those who sympathize with our work and are ready to do their part towards supporting it as they have opportunity. *All such we welcome to our ranks,¹ believing that an increase of our numbers, if recruited from such sources, will widen its influence for good, as well as promote cordial and friendly intercourse between representative men in the legal profession from the various states.*"

Hon. Alton B. Parker, former Chief Judge of the New York Court of Appeals, voiced this view:

"Our Bar associations have done splendid work in the past by studying proposals for reform by legislation or otherwise, and advising the people upon the merits where the questions at issue were peculiarly within the intellectual jurisdiction of lawyers. Their efforts have been appreciated and their advice heeded. Wisdom dictates the further prosecution of this great work.

"To fulfill their patriotic duty the associations need generous sacrifice of time and effort by all the members of the Bar.

"Because the American Bar Association occupies, by reason of its eminence, the most influential place in this work, I believe that the country's need calls upon every lawyer to become allied with that great body of the associated Bar² and render as a member all the help he may toward the fulfillment of the noblest purpose of the Association, the ascertainment and the discovery to the man with the vote, of the truth upon such public questions as the Bar has been considering and is peculiarly qualified to investigate."

WHAT EACH INDIVIDUAL MEMBER MAY DO.

If each member will answer President Root's appeal by securing the consent of merely from one to three members of the Bar to join the Association and will propose their names for membership,² the results in the aggregate will be noteworthy. It is

¹ Attention is also particularly called to the comments, on the last half of p. 493 concerning the new law quarterly, the AMERICAN BAR ASSOCIATION JOURNAL.

² See proposal blank at p. 495.

to be hoped that each member will do at least this. *Will not you and each of you—and at once?* See proposal blank at p. 495.

JUDGE STAAKE'S LETTER OF INVITATION RECOMMENDED AS A FORM.

Hon. William H. Staake, President of the Conference of Commissioners on Uniform State Laws, sent out a number of letters identical in form to a group of personal friends inviting them to permit him to present their names for membership. It produced so large a percentage of favorable replies and so clearly states the points important to lay before intending applicants that it is reproduced here in the hope that it may prove suggestive to others when writing offering to propose professional brethren for membership:

"It would be a matter of considerable pride and gratification to me if you can see your way clear to become a member of the American Bar Association.

"I can assure you that membership in the Association will be both personally and professionally to your great advantage.

"The dues are but \$6 per year, with no initiation fee, and *include* subscription to the Association's new quarterly organ—the AMERICAN BAR ASSOCIATION JOURNAL, for which those not members must pay \$3 per year. The one payment (not due until after you have been elected to membership) will settle all charges and carry your membership to August, 1917, and even should you never attend an annual convention, you will receive, I am sure, full value for the amount of the dues, including prints of all reports of committees and the 'Annual Report'—a bound volume of over one thousand pages, issued annually in December, and constituting a valuable year-book of the profession in America, containing, *inter alia*, stenographic report of the annual convention, with all the addresses delivered; the proceedings of the various sections, among them the Judicial Section (composed of Federal and State Appellate Court Judges, of whom *over 75 per cent are members of the Association*), also of the Comparative Law Bureau, the Commissioners on Uniform State Laws and the American Institute of Criminal Law and Criminology, and a summary of the proceedings of the various state Bar associations, reprint of the Canons of Professional Ethics, etc., etc.

"I know of no better way for a lawyer to keep in active touch with his great profession than by membership in this wonderful organization, and I can assure you that new members receive a

hearty welcome. Every reputable lawyer should regard it as in a sense a duty to be a member and participate in the work of the organization.

"The Bar of our state deserves the best which the profession can give it; and our National Association deserves to have the strength and the character of our Bar as an aid in the great work it is performing.

"Will you not afford me the pleasure of proposing you for membership? If so kindly advise me of the year of your admission to the Bar. The favor of an immediate reply will be appreciated."

All of which is respectfully submitted.

For the Committee.

LUCIEN HUGH ALEXANDER,

Chairman.

June 30, 1916.

MEMBERSHIP COMMITTEE, 1915-16.

SIMEON E. BALDWIN, Conn.

MOORFIELD STOREY, Mass.

JOSEPH H. CHOATE, N. Y.

EDMUND WETMORE, N. Y.

FRANCIS RAWLE, Pa.

HENRY ST. GEORGE TUCKER, Va.

GEORGE R. PECK, Ill.

ALTON B. PARKER, N. Y.

JACOB M. DICKINSON, Tenn.

FREDERICK W. LEHMANN, Ill.

EDGAR H. FARRAR, La.

STEPHEN S. GREGORY, Ill.

FRANK B. KELLOGG, Minn.

WILLIAM H. TAFT, Conn.

PETER W. MELDRIM, Ga.

GARDINER LATHROP, Ill.

ALFRED HEMENWAY, Mass.

JAMES M. BECK, N. Y.

THOMAS W. SHELTON, Va.

LAWRENCE MAXWELL, O.

GEORGE T. PAGE, Ill.

LYNN HELM, Cal.

JOSEPH W. O'HARA, O.

CHARLES A. BOSTON, N. Y.

J. FRANKLIN FORT, N. J.

SELDEN P. SPENCER, Mo.

LUCIEN HUGH ALEXANDER, Pa.

Chairman.

Cut along this line

AMERICAN BAR ASSOCIATION MEMBERSHIP PROPOSALS

N. B. The constitution declares five years membership, in good standing at State Bar, a prerequisite to election.

DATE _____



NAME OF CANDIDATE

Please fill name in very distinctly—typewriting preferred—
and state whether title "Hon." or "Esq." should be used.

ADDRESS IN FULL

(Street or building number should be plainly noted)

YEAR OF ADMISSION
TO STATE BAR



Proposals should be promptly forwarded to
the Vice-President for the Candidate's State,
who will give the matter immediate attention.

See list of the Vice-Presidents on the reverse of this page.

I propose the above, who *consent to their nomination* and desire to become members of the Association.

Signatures of Proposer _____

Address " " _____

[OVER]

In re Proposals for Membership

VICE-PRESIDENTS
OF
AMERICAN BAR ASSOCIATION 1915-1916

All membership proposals should be promptly forwarded direct to the Vice-President for the candidate's State for attention by him and the Local Council for that State.

See proposal blank on the reverse side of this page.

Additional proposal blanks will be promptly furnished on application to the MEMBERSHIP COMMITTEE, Lucien Hugh Alexander, Esqr., Chairman, 3400 Chestnut Street, Philadelphia.

It is not essential that there should be a letter of transmittal with a proposal; but should one be sent it is requested, in order that a duplicate record may be made, that a carbon copy of the letter to the Vice-President be at the same time forwarded to the Membership Committee, at above address.

State	Name of Vice-President	Address
Alabama	Z. T. Rudolph	Steiner Bldg., Birmingham.
Alaska	Frederick M. Brown	Judge U. S. Court, Valdez.
Arizona	E. E. Ellinwood	Bisbee.
Arkansas	W. H. Arnold	Texarkana.
California	Isidore B. Dockweiler	Van Nuys Bldg., Los Angeles.
Colorado	A. M. Stevenson	E. & C. Bldg., Denver.
Connecticut	George D. Watrous	121 Church St., New Haven.
Delaware	Edward G. Bradford	Federal Bldg., Wilmington.
District of Columbia	Henry E. Davis	Jenifer Bldg., Washington.
Florida	Robert E. Davis	Gainesville.
Georgia	John L. Tye	413 Equitable Bldg., Atlanta.
Hawaii	William R. Castle	31 Merchants St., Honolulu.
Idaho	Karl Paine	Boise.
Illinois	John T. Richards	72 W. Adams St., Chicago.
Indiana	Charles S. Baker	Columbus.
Iowa	Isaac N. Flickinger	Council Bluffs.
Kansas	Chester I. Long	523 Beacon Bldg., Wichita.
Kentucky	William W. Crawford	906 Realty Bldg., Louisville.
Louisiana	I. D. Wall	Baton Rouge.
Maine	William M. Ingraham	Portland.
Maryland	John P. Briscoe	Prince Frederick.
Massachusetts	Alfred Hemenway	Tremont Bldg., Boston.
Michigan	C. P. Black	Lansing.
Minnesota	Charles R. Fowler	N. Y. Life Bldg., Minneapolis.
Mississippi	A. W. Shands	Cleveland.
Missouri	W. O. Thomas	Circuit Judge, Kansas City.
Montana	James A. Walsh	Helena.
Nebraska	Thomas W. Blackburn	732 Keeline Bldg., Omaha.
Nevada	Robert G. Withers	Reno.
New Hampshire	Reuben E. Walker	Supreme Court, Concord.
New Jersey	Richard Wayne Parker	765 Broad St., Newark.
New Mexico	Thomas B. Catron	Sante Fe.
New York	Samuel P. Goldman	120 Broadway, New York.
North Carolina	George S. Bradshaw	Greensboro.
North Dakota	H. A. Bronson	Grand Forks.
Ohio	Edward Kibler	Newark.
Oklahoma	R. A. Kleinschmidt	Patterson Bldg., Oklahoma City.
Oregon	Richard W. Montague	Yeon Bldg., Portland.
Pennsylvania	George B. Gordon	Frick Annex, Pittsburgh.
Philippine Islands and China	Edward B. Bruce	Manila, P. I.
Porto Rico	Manuel Rodriguez-Serra	San Juan.
Rhode Island	Dexter B. Potter	Butler Exch., Providence.
South Carolina	F. Moullrie Mordecai	Peoples Office Bldg., Charleston.
South Dakota	W. G. Rice	Deadwood.
Tennessee	W. K. McAlister	Noel Blk., Nashville.
Texas	Hiram Glass	Austin.
Utah	Parley L. Williams	Deseret News Bldg., Salt Lake City
Vermont	Clarke C. Fitts	Brattleboro.
Virginia	Robert M. Hughes	Law Bldg., Norfolk.
Washington	Benjamin S. Grosscup	Bk. of Calif. Bldg., Tacoma.
West Virginia	Fleming N. Alderson	Richwood.
Wisconsin	William A. Hayes	120 Wisconsin St., Milwaukee.
Wyoming	Charles N. Potter	Supreme Court, Cheyenne.

REPORT

OF THE

COMMITTEE ON NOTEWORTHY CHANGES IN STATUTE LAW.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

In this, an off-legislative year, regular sessions have been or are being held in Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina and Virginia. Special sessions for the consideration of particular emergency questions have been held in California, Illinois, Oklahoma, South Dakota and Tennessee. At the regular sessions alone, excluding Louisiana, which convened May 8, and Georgia, which convenes June 28, there were introduced nearly 15,000 bills. In addition to these numerous proposals for the improvement of our law or its administration, there have been introduced in the present Congress more than 10,000 bills. We must not, however, be misled by mere numbers, for some of these bills are duplicates or relate to the same subject, a very large number provide detailed and unimportant amendments to existing law, and not a few are nebulous proposals intended rather as educational propaganda for reforms barely on the horizon than as possible statutes.

It may be interesting to note the number of these bills which became laws. At the time this report was prepared figures were available for only a few of the states. In New York, out of 3073 bills, 806 passed both houses, 160 were vetoed by the Governor and 646 chapters were added to the laws. In Virginia, out of 1275 bills, 537 passed both houses, 13 were vetoed and 524 became laws. In South Carolina, out of 1831 bills, 369 passed both houses, 4 were vetoed and 365 became laws. In New Jersey, out of 893 bills, 339 passed both houses, 41 were vetoed and 298 became laws.

Because of the early date at which it was necessary to submit this report for inclusion in the July JOURNAL of the Bar Association, it was impossible to secure for examination copies of all

the laws enacted at the sessions this year. The accompanying review of the legislative product includes the acts of Congress and of the states available on June 15. The review, though tentative, mentions practically all the laws of general importance enacted by sessions which had then adjourned. The references to the acts of Kentucky, Mississippi and South Carolina and a portion of those of Maryland and Virginia are based on the titles, because the laws were not available, and may therefore be misleading or inaccurate.

It is the intention of the committee to revise this review and to submit a complete review of this year's legislation at the meeting of the Association in Chicago. The committee, therefore, earnestly invites criticism and suggestion as to the form of the review, its comprehensiveness or the accuracy of the digests or citations.

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TENTATIVE REVIEW OF 1916 LEGISLATION.

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A. ADMINISTRATION OF JUSTICE.

1. Organization and Administration of Courts.

Mississippi (H. 360)¹ provides for election and fixed terms of supreme court judges and submits constitutional amendments (H. Concur. Res. 14, 15, 16, 17, 18, 19) to increase the number of supreme court judges to six, provide for filling vacancies, for the trial of cases before three judges, to fix their terms, to require their election by the people and to provide that they may sit for the trial of cases in two divisions.

¹Where chapter numbers of enacted laws are available, only the figures are given. In the absence of chapter numbers pages are given. Where laws were not available, Senate and House bill numbers are given.

Massachusetts (174) extends the civil and criminal jurisdiction of district police or municipal courts so that their process runs throughout the state, and makes them courts of superior and general jurisdiction; and (Res. 30) provides for the appointment of a commission of three to investigate the advisability of abolishing the office of trial justice and bringing within the jurisdiction of existing district or municipal courts towns now outside their jurisdiction.

Virginia (300) authorizes court clerks to appoint as deputies women over 21. New Jersey (248) permits the sheriff to appoint attendants for the several county courts to take the place of constables, and places them in the classified civil service.

New York (171) authorizes the secretary of state to grant the right to publish reports prepared by official reporters in annotated edition of law reports heretofore issued. Virginia (201) authorizes judges of county or city courts to appoint committees to report on the need of an improved system of indexing court records, and, if such report is favorable, to authorize the committee to contract therefor.

Maryland (326) provides for the creation of juvenile courts when all judges in a circuit deem it necessary. The court is to have jurisdiction over dependent, neglected and delinquent male children under 20 and females under 18. New Jersey (212) provides that juvenile court records shall be kept in a separate book and shall not be admissible in evidence in any proceeding except during the period of the defendant's probation or within two years after his discharge from an institution to which he was committed by such court. After such period the clerk is required to destroy such records unless within that time the defendant has been convicted of an offense. Massachusetts (243) provides that no juvenile cases on appeal may be held in conjunction with other business of the court in rooms used for criminal trials, and the court is given power to exclude the general public from these trials.

2. Attorneys.

Congress (No. 57) makes it unlawful for any person practicing before any government department or office to use the name of

Congressmen or government officers "in advertising the said business."

New York (254) provides that corporations forbidden to practice law may furnish to persons lawfully engaged in the practice of law information or clerical services in connection with their professional work; but the lawyer is directly responsible to his client. Corporations may not render services which cannot be lawfully rendered by persons not admitted to practice nor may they directly or indirectly solicit professional employment for a lawyer. Massachusetts (292) forbids corporations to practice law, or to advertise or draw agreements or legal documents not relating to their lawful business, or to draw wills. Banks and trust companies may furnish information with respect to investments and taxation. The act does not apply to public service corporations, those engaged in mercantile or adjustment bureaus in the guaranteeing of titles to real property, insuring against liability for damages by injury, assisting attorneys to organize corporations, to charitable corporations, those organized in the state for the purpose of assisting persons without means in pursuit of civil remedies, to newspapers answering inquiries through their columns, or to corporations providing legal advice to their employees. Maryland (695) also prohibits corporations practicing law.

Mississippi (S. 68) establishes a state board to regulate admission to the Bar, and Maryland (509) requires applicants for admission to have a school certificate.

Virginia (204) provides for a public defender in cities of over 50,000, appointed for two years and removable by the judge appointing him, and see New Jersey (54) as to state legal aid to workmen's compensation claimants.

3. Juries.

New Jersey (184) provides that for the selection of a struck jury the jury commissioners shall furnish the courts with a list of persons liable to jury duty, containing in first class counties 400 and in other counties 160 names. An interesting illustration of administrative detail finding its way into a formal statute is furnished by the New York amendment to the law relating to

fining delinquent jurors in New York County. This act (398) requires the commissioner of jurors to transmit to the corporation counsel a record in duplicate of fines imposed and the latter to enter on such duplicate the final disposition of the proceedings to enforce the fine and then to return it to the commissioner of jurors.

Mississippi provides (H. 707) for a verdict by three-fourths of the jury in civil cases in circuit and chancery courts and submits a constitutional amendment (H. Concur Res. No. 43) to permit verdicts by nine or more jurors in civil cases.

4. New Remedies.

New York (507) extends the Mechanics' Lien Law, provides in detail for the priority of liens for materials furnished, labor performed or money advanced for improvements; and in particular provides, under various circumstances of mortgage or assignment by owners or contractors, for equalizing the position of all liens if the holders of 75 per cent of the liens agree.

New Jersey (126) extends to bleachers of cotton goods the lien for charges in transportation formerly confined to dyers and finishers.

Virginia (137) provides that where real or personal property is held in trust to secure payment of a debt and no date of maturity is fixed or authority given to sell the security, the court, on application of the lien creditors, may decree a sale and reinvestment of the proceeds.

5. Limitation of Action.

Virginia (290) provides that computation of time shall exclude the first and include the last day of a stated period and extends the provision, now limited to time stated in statutes, to contracts. Virginia (S. 58) regulates the suspension of the statute of limitations in general creditor suits. An action in New York against a person non-resident when the action accrued, cannot be brought after the expiration of the time specified in the laws of his residence unless that time be less than that allowed by New York laws, in which case the latter applies (536).

6. Crimes and Criminal Procedure.

Congress (No. 81), Sec. 10, evidently intended to amend the criminal code as to defacement of mail boxes, actually by reason of careless drafting provides that the *criminal code of the United States* shall be amended "to read as follows," and then inserts a 10-line provision as to the mail boxes. Strictly interpreted, this provision probably repeals the entire criminal code.

The movement to abolish capital punishment is represented by Maryland (214) providing that the jury may add to first degree murder verdicts the words "without capital punishment," in which case the court shall impose a life sentence and shall not impose a death penalty; and New Jersey (270) providing that the jury at the time of rendering the verdict may recommend imprisonment at hard labor for life, in which case no greater punishment shall be imposed. Virginia (198) provides that where, after sentence to death or imprisonment in the penitentiary, application for a writ of error suspension of sentence is made, the court or judge may admit the prisoner to bail. Kentucky (39) by amendment provides that juries shall fix penalties in all criminal cases.

New Jersey passed two bills in order to expedite the trial of petty criminal cases and to save the finances of cities and towns affected. In one (225), justices of the peace in fourth class cities may take complaints against persons guilty of criminal offenses and issue warrants, and if bailable may admit to bail. The other (73) provides that in cities of the second class, a recorder's court, police court or municipal court shall have jurisdiction over cases of assault, larceny, embezzlement or a similar offense of less than \$20, or over criminal offenses where the penalty does not exceed a fine of \$100 or imprisonment for six months, provided that the accused waives, in writing, indictment and trial by jury.

The New York charter (95) was amended to authorize the police commissioner to offer a reward for the detection and conviction of any person guilty of a felony. The former law simply provided for a reward in cases of larceny, arson or receiving stolen goods. Mississippi (H. 353) makes certain conspiracies felonies.

7. Service of Process.

New Jersey (198) provides that in personal actions against foreign corporations the summons may be served on any officer, director, ticket or freight agent personally in a county in which venue is laid, and against domestic corporations summons may be served personally on any officer or agent in charge of the principal office or any ticket or freight agent in its county office. Maryland (609) permits suits to be brought against Adams Express Company or any incorporated stock company in the name in which they carry on business where the principal office is located, where the business is transacted, or, in a local action, where the subject matter lies.

8. Trials.

Mississippi (H. 45) makes the receipt and transcription at destination of telegrams conclusive *in re* failure to deliver. New Jersey (205) provides for admission of transcripts of the entry or abstract of mortgages.

To save expense in cases where the summons is sufficient to induce the debtor to pay, New Jersey (253) provides that in contract actions in district courts a plaintiff who fails to file with the clerk a copy of his account or state of demand shall be non-suited.

Virginia (287) provides that on motion in actions for personal injuries contributory negligence must be set forth in a bill of particulars, but the defendant is not precluded from relying on the contributory negligence disclosed by the plaintiff's testimony. Maryland (206) provides for judgment by default, unless the affidavit of defense states a legal defense, and (14) that failure of administrators or executors to plead *plene administravit* or insufficiency of assets shall not render them personally responsible.

The report of the Massachusetts Commission on Uniform Methods of Procedure for taking land for public purposes was referred (Res. 91) to the Attorney-General for further investigation and report. New York (440) authorizes the Supreme Court to appoint a guardian *ad litem* or special guardian for infants or incompetent persons at any stage of an action when it appears necessary to protect the interest of such persons.

9. Appeals.

California (Res. 9) requests the judges of the state courts and the state and local Bar associations to submit recommendations to avoid dilatory practices and delays on appeal.

New Jersey (62) provides that in cases submitted without a jury, error by the court in giving final judgment is not subject to modification or reversal unless the grounds of objection have been specifically submitted.

New York (230) takes away the right of the attorney for a defendant convicted of a crime punishable by death to have the stenographic minutes unless he files notice of appeal. Mississippi (H. 114) provides for appeal after conviction in certain felonies, and also (H. 236) limits the time in which appeals may be taken to the Supreme Court.

10. Judges' Pensions.

Virginia (193) provides that after 12 consecutive years of service and attaining 70 years, the judges of the Supreme Court of Appeals who retire during the years 1915-1919 inclusive shall receive three-fifths of their salary for the balance of their lives. New York (262) extends to the third and fourth judicial departments the existing law heretofore confined to the first and second departments authorizing the appellate division to appoint as referees former judges who have served for 14 years or who have served 25 years in a court of record in which 14 were served in the Supreme Court.

B. PRISONS AND PUNISHMENT FOR CRIME.

Congress (No. 60) provides that "judgment of conviction" against children in the juvenile court of the District of Columbia shall not be denominated a "conviction" nor the defendant a "criminal," and that such conviction shall not disqualify the child for jury duty or public office. New York (394) provides that minors in the penitentiary shall be kept apart from adults.

Virginia (297) authorizes the trial judge to substitute road work for jail sentence in misdemeanor cases, and (57) provides for a suspended sentence during good behavior for a first offender in case of larceny and forgery.

Mississippi (S. 95) reduces to life sentence the penalty for rape. Virginia (29) repeals the requirement of life sentence for penitentiary convicts who have been twice before sentenced to the penitentiary and allows the judge to add such term as he deems proper to the sentence which would be imposed on such convict if he had not previously been in the penitentiary. It also (30) substitutes for a required five-years' addition to penitentiary sentences where the convict has been once before sentenced to the penitentiary, provision authorizing the judge to impose such additional term not exceeding five years as he deems proper.

Virginia (283) reduces jail or penitentiary sentences in default of payment of fines by the time actually spent in jail awaiting trial or sentence. Maryland (646) and Massachusetts (3) reduce the fine in such cases by \$1 and .50 respectively for each day spent in jail.

Virginia (324) allows for good conduct 10 days instead of four for each month of faithful observance of prison rules, and adds a provision that for violation of rules "punishable by stripes" or for attempt to escape a convict shall forfeit all earned allowances. New York (358) provides that persons in state prison under definite or indefinite sentence may earn by faithful performance of duty a commutation of sentence or the right to be considered for parole. It provides a form of payment for work done by prisoners. Kentucky (39) allows 10 days per month for good conduct.

New York (287) amends in minor details the Parole Commission Act for first class cities. Among other things the amendment prohibits commitment to a penitentiary for failure to pay fines or give security, and provides that no person convicted of enumerated offenses for which increased punishment is provided for third offenders shall be sentenced until finger print records of the magistrates' courts have been searched and the results certified to the court. Kentucky (38) provides parole for prisoners who have served one-half their sentences, or in case of "lifers," after eight years.

Massachusetts (241) abolishes the board of prison commissioners and boards of parole and establishes a bureau of prisons under a director with an advisory board of three men and two

women and a board of parole of three members. This bureau is given power to investigate the management and condition of all penal institutions. Powers of the old board of prison commissioners are vested in the new bureau and the powers of the old board of parole are vested in the new board. Maryland (556) creates a state prison control board. Mississippi (H. 434) creates a state pardoning board.

Virginia (45) requires sheriffs and jailers to keep records of their prisoners and to report monthly to the state board of charities and corrections the records of prisoners received during the preceding month, stating whether the offense was a violation of state law or city ordinance, and describing the offense if imprisonment is for non-payment of fine. Such record shall give other required detail, including color, age, physical condition, sentence, and whether confirmed drunkard or drug habitué. If such report is not furnished the secretary of the state board may prepare it and, on certifying its cost, that sum is to be deducted from any funds due the defaulting sheriff or jailer.

New York (236 and 242) reorganizes penal and charitable institutions in Westchester County under the management of a commissioner of charities and correction. While the county jail is left under the sheriff, the law requires all courts and magistrates in the county authorized to sentence to county jail or penitentiary to sentence such persons to the county penitentiary and workhouse, which is under the new commissioner.

Massachusetts (76) authorizes the removal from state prison to prison camps prisoners other than "lifers" who have shown by "conduct and disposition that they would be amenable to less rigorous discipline," and (183) drops the provision limiting to one hundred the number of inmates to be accommodated at the prison camp. By (187) the law punishing escapes from prison camps is extended to attempts to escape and the punishment therefor is made imprisonment for one to five years in the institution to which he was originally sentenced.

Mississippi (S. 397) creates a commission to buy additional land for state penitentiary. New York (594) reorganizes a commission on new prisons and provides for the selection of a new prison site and the construction of a farm and industrial prison to cost \$1,250,000. The commission is also required to

adopt plans for the demolition of the present cell house and block at Sing Sing and the substitution of new buildings. Prison labor is to be used in the work so far as practicable.

C. ORGANIZATION AND ADMINISTRATION OF STATE GOVERNMENTS.

Recognition of the demand for business methods in the conduct of government is found in acts establishing budget systems of appropriation, central purchasing agencies and economy and efficiency commissions.

New Jersey (15) establishing a budget system requires the Governor to make his recommended appropriations on the basis of estimates submitted by the departments; all appropriations are required to appear in the general appropriation bill. Carefully guarded provision is made for the transfer of items to relieve possible inflexibility of segregated appropriations. New York (130) providing a budget system requires the Governor to submit recommended appropriations and authorizes him to submit estimates of revenue. The principal responsibility for preparing budget data is placed on the chairman of the finance committee of the legislature. Not later than March 15 annually these committees are required to submit a budget of appropriations, detailed estimates of revenues, and proposed state taxes. The most important changes in present procedure are those requiring all appropriations to be in a single bill, providing that the appropriation bill shall be a special order for five full legislative days in committee of the whole, authorizing the appearance of heads of departments to be heard and answer inquiries, making the bill when advanced to third reading a special order for three full legislative days, and confining amendments on third reading to reduction or elimination of items except by unanimous consent. Maryland (159) authorizes the Governor to submit two budgets to the legislature.

New Jersey (68) creates a central purchasing agency, controlled by a commission consisting of the Governor, Treasurer and Comptroller, to purchase all supplies for state departments and offices except for construction work. A purchasing agent at \$5000 a year, appointed by the commission, with an advisory

board composed of representatives from each department, is charged with the fixing of standards and prices and the administration of the detail provisions governing purchases.

New York (49) aims at economy through cooperation of state departments by authorizing a department having apparatus or expert service necessary to perform special work to furnish the same to other departments on request and in other ways suggests and facilitates cooperation. Maryland (285) with similar purpose provides for the use of trained specialists in educational institutions by making professors of designated subjects in the state college, the state entomologist, the state pathologist and the state horticulturist respectively.

Massachusetts (296) abolishes its economy and efficiency commission and substitutes therefor a supervisor of administration. Virginia (211) creates an unpaid economy and efficiency commission to investigate the possibility of more efficient and economical organization and administration of the state and local governments, and (199) authorizes a committee to study methods and expense of publishing state and local documents.

Massachusetts (2) increases central control over expenses by prohibiting increases in salary of employees without approval of the Governor and council.

Reorganization in the interest of centralization and economy is found in Massachusetts (288) abolishing port and harbor offices and substituting a single commission on waterways and public lands, and in Maryland (682) vesting in a new conservation commission the powers and duties of several abolished offices.

An interesting example of contingent legislation and of state retirement from administrative fields fully occupied by the federal government is found in New York (342), which provides that on the filing of a certificate by designated officers that they have, in pursuance of the authority delegated by the act, transferred the state quarantine establishment to the United States, the office of health officer of the port of New York shall be abolished.

Virginia (S. 183) creates a state art commission, and Maryland (705) creates a state charities board.

D. LOCAL GOVERNMENT.

Virginia (68) proposes a constitutional amendment authorizing the legislature to submit to cities a choice of several forms of government. It is also proposed to drop a constitutional provision permitting certain cities to request a special form of government. Meanwhile, to make this latter provision effective, provision is made (65 and 76) for the method of procedure for drafting and submitting to the legislature a desired special form of government. New York (156) provides that petitions for change of government under the optional city government law may be presented after June 30, 1917, thereby practically postponing the effect of the act until that time.

Oklahoma (p. 120) by adopted constitutional amendment authorizes counties to abolish or resume township form of government. Supervisors of counties adjoining large cities are by Virginia (102) given the same powers as city councils, except that their regulations are to be subject to the approval of the circuit court.

Virginia (103) recognizes the need of experts in city government and provides that persons having technical skill may be appointed to office although neither residents nor voters, and (281) authorizes the appointment of police-women in certain cities.

Massachusetts (223) provides for central purchasing departments in cities (except Boston) when the act is approved by the voters of a city.

New Jersey (J. R. 7) continues its commission on municipal financing. Important bills recommended by this commission were passed by the legislature but vetoed by the Governor. One which became law (252) contains detailed provisions for the issuance of bonds by counties and municipalities.

The New York charter as amended (615) prohibits the use of the proceeds of long-term bonds for non-revenue-producing improvements.

One of the last strongholds of the fee system of compensating public officers is removed by New York (525), which requires the sheriff of New York County, after January 1, 1918, to pay over the one-half of his fees (said to amount to \$50,000 annually), which he now retains.

City planning is provided for in Massachusetts (190), which authorizes cities to establish boards of survey to make and alter plans for streets, and by New Jersey (175), which requires municipal plan and art commissions to prepare a city plan when they deem its preparation desirable. New York (112) authorizes excess condemnation in the City of New York to the extent necessary to form suitable building sites abutting on street and other improvements.

New Jersey (239) authorizes cities to establish "white ways" by illumination of main thoroughfares at the expense of abutting property. New York (108) authorizes villages to establish publicity funds for advertising their advantages, and New Jersey (25 and 279) gives similar authority to counties and cities.

New Jersey authorizes (162) municipal construction, ownership and operation or lease of docks, warehouses and shipping facilities; and (120) construction and operation or lease of a municipal railroad through, over or upon city streets or private property with incidental docks, warehouses and terminals.

New Jersey (70 and 71) divides the state into two water districts and establishes a water supply commission for each, with power to find new sources of municipal water supply, to acquire water rights, construct water systems, and make arrangement for joint supplies to different municipalities.

Rhode Island (1411) provides for a retirement board to retire employees of the City of Providence, and Maryland (498) provides pensions for disabled employees of Baltimore. Massachusetts (75) makes the pledge or transfer of a right to a state or municipal pension, or the holding of such pension as collateral a misdemeanor. New York (201) permits a state or municipal pensioner to hold certain offices without forfeiting his pension, it being suspended during his holding of such office.

E. CIVIL SERVICE.

New York (438) authorizes Civil War veterans employed continuously for 10 years in the state service, who have reached 70, to apply for retirement at half pay not exceeding \$1000. If such veterans be manual laborers they shall be retired when incapacitated.

New Jersey (129) requires the state commission to provide for the keeping of efficiency records for the state and municipal competitive service. Municipalities are required to keep efficiency records subject to the supervision of the state commission, these records to be a basis of promotion, and in case of reduction of force, the persons shown by the records to be least efficient are to be dropped first; and (122) provides for demotion to lesser positions of persons whose positions are abolished for reasons of economy and for placing such persons' names on special eligible lists which take precedence of other lists for the positions abolished or similar positions.

New Jersey (Res. 6) creates a commission to study the operation of the civil service laws in the state and its municipalities. New York (356) gives municipal commissions power to investigate the operation of the civil service law and rules, conduct hearings, summon witnesses, etc.

Massachusetts (297) authorizes the civil service commission to investigate the work and compensation of officers and employees in the classified service, and on request of the appointing power to inquire into the efficiency and conduct of particular officers and employees and if necessary recommend their removal.

F. ELECTIONS.

The Oklahoma initiated constitutional amendment (p. 114), making ability to read and write a section of the state constitution a qualification of voters, excepting certain persons and their lineal descendants, having been held unconstitutional, a joint resolution (p. 144) proposes a new amendment, changing the description of the persons excepted from the literacy test to those who have seen military or naval service (including service in any foreign nation) and their descendants. This seems to vary the usual "grandfather clause" by confining the ballot to the military and their descendants.

New Jersey (277) requires registration in person or by affidavit in municipalities of 5000. The provision for registration by affidavit is new and applies to persons prevented from registering in person by illness or absence from state. This law also authorizes marking the ballots with a + mark as well as with an X. State-wide registration is required in Oklahoma (24).

Oklahoma (25) permits voting in another precinct by the voter absent from his own county, and Virginia (H. 5) permits absent voters to vote by registered mail.

Massachusetts (16) regulates primary ballot arrangement of candidates for delegate to national conventions. Preferences for President shall be entered on the ballot, if declared by candidates and consented to by person preferred, which consent may be communicated by telegraph or cable. Massachusetts (179) repeals (subject to referendum at the next state election) the 1914 law authorizing a single ballot for all parties at primary elections and restores the 1913 requirement of separate ballots for each party. California (1, 2, Special Session) amend the direct primary and Presidential primary laws. Chapter 135 of the Laws of 1915 provided for registration without declaration of party affiliation, but that act was rejected by the voters on referendum. The 1916 amendment provides for declaration of party affiliation at the time of voting at a primary election instead of at the time of registration. Maryland (292) prohibits voting at primary elections without disclosing party affiliation. South Dakota (3, Special Session) advances date fixed by the 1915 law for the general primary to obviate necessity of two primaries in the Presidential year, one for state officers and another for national conventions, and also contains new provisions as to nominating delegates and expressing preference for President. The necessity of supplying defects of the 1915 primary law was responsible for the special session in this state.

Kentucky (53) enacts a "corrupt practices" act prohibiting corporation contribution to and limiting amounts of campaign expenses, and annulling elections in certain cases of violations.

G. INITIATIVE, REFERENDUM AND RECALL.

Oklahoma (32) amends the initiative and referendum law respecting the distribution of publicity pamphlets. If public officials fail to print and distribute required pamphlets an elector may petition the court for a mandamus, but failure to print and distribute such pamphlets is not to invalidate any election.

A constitutional amendment authorizing the initiative, referendum and recall is proposed by Mississippi (S. Con. Res. 18).

The absence of further legislation in this field is probably due to the fact that no state west of the Mississippi River held a regular session this year.

H. REVISION AND AMENDMENT OF STATE CONSTITUTIONS.

Massachusetts (98) submits to the general election 1916 the question of calling a constitutional convention. If approved, 320 delegates are to be elected first Tuesday of May, 1917, and the convention meets first Tuesday of April following. Nomination and election of delegates must be by non-partisan ballots.

Specific constitutional amendments proposed or adopted are classified under the subject matter to which they relate.

I. UNIFORM STATE LAWS.

Bills recommended by the Conference of Commissioners on Uniform State Laws were passed as follows:

Uniform Transfer of Stock Act—New Jersey (191).

Uniform Partnership Act—Maryland (175).

Uniform Bills and Notes Act—Mississippi (S. 124).

Uniform Torrens System Act—Virginia (62).

J. STATUTES—PREPARATION, REVISION AND CONSOLIDATION.

Virginia (147) proposes to amend the constitution respecting the reading of bills so that instead of being read at length on three different calendar days in each house they shall be read *by title* on three such days and *at length* once in each house. New York (32) amends the law regulating the bill drafting commission by making the commissioners' five-year term indefinite, by reducing their salaries from \$6000 to \$5000 each, payable in six monthly instalments, and by requiring them to keep their office at the capitol open from December 1 through the session instead of from September 1. These changes reduce the fixed cost of the office by \$2400 annually out of an expenditure for last year of about \$37,000.

Lobbying before the legislature is regulated by Kentucky (16) and Mississippi (S. 36).

New Jersey (84) creates a commission of lawyers who are or have been counsel to cities to revise and codify statutes relating

to municipalities and to report bills for the delegation to municipalities of power to deal with local matters, thereby avoiding the necessity for resort to the legislature. The preamble to this act suggests that such delegation in addition to removing "confusion and uncertainty" would also "shorten the sessions of the legislature."

New York (378) repeals the existing law authorizing the preparation of an index to the state statutes. The continuance of the index is made dependent on the report to the next legislature of the chairmen of the judiciary committees of the senate and assembly. New York (400) extends to February 15, 1917, the time for the final report of the commissioners to consolidate laws relating to decedents' estates and surrogates' courts.

Massachusetts (Res. 43) provides for the appointment of three "able and discreet persons learned in the law" as commissioners to consolidate and arrange the general laws of the state. The commissioners are instructed to render the laws "concise and intelligible," to "omit redundant enactments," to reject superfluous words, to condense into concise form if consistent with clearness "all circuitous, tautological and ambiguous phraseology, and to suggest methods of correcting, supplying or amending mistakes, omissions, inconsistencies and imperfections." A report of substantive changes is to be made in January, 1918, and the final report in January, 1919. The commissioners shall receive \$5000 a year and may expend such sums as the Governor and council authorize.

New Jersey (56) authorizes the Governor, president of the senate and speaker of the assembly to contract for the preparation of a supplement to the compiled statutes to cover the session laws from 1911 to 1916, inclusive, and abstracts of decisions.

K. EDUCATION.

Congress (No. 52) incorporates "American Academy of Arts and Letters" to further interests of literature and fine arts, with not exceeding 50 members, 49 of whom are named in the act.

New Jersey (152) prohibits conferring of degrees by any institution not licensed by the state board of education and contains curious detailed procedure for imposing penalties for violation of the act.

New York (545) incorporates "Institute for Public Service" to conduct training school to prepare men for the public service by doing field work in cooperation with public officers. This field work may be conducted in the problems of public business, education and benevolent foundations. The wide scope of the institute's work is indicated by the power to "search for strong administrators and for large opportunities that need efficient men."

New Jersey (76 and 102) provide appropriations for vocational education. Massachusetts (95) defines cooperative courses authorized in the public schools and cooperating industrial establishments as "courses approved as such by the board of education and conducted in public schools in which technical or related instruction is given in conjunction with practical experience by employment in cooperating factory, manufactory, mechanical and mercantile establishment or workshop."

Massachusetts (185) authorizes cities whose voters accept this act on referendum to establish day or night schools in agriculture and horticulture under the supervision of the board of education. South Carolina (H. 524) provides for teaching agriculture in the public schools. Massachusetts (Res. 106) creates a commission to investigate agricultural education as conducted at the Massachusetts College. Maryland (372) incorporates a state agricultural college.

Massachusetts (102) provides for the registration of minors and enforcement of compulsory education law by attendance officers.

New Jersey (263) requires teachers to read without comment in each public school classroom at the opening of each day at least five verses of the Old Testament.

New Jersey (13) provides for collection from the children and deposit in savings banks of small sums by school authorities, and New York (90) amends a similar law by extending its provisions to philanthropic agencies having the direction and guidance of children.

New Jersey (149) authorizes the commissioner of education to appoint "helping teachers" to aid teachers in two or more districts.

The use of school houses and grounds for recreative, social, athletic and other purposes is authorized by New Jersey (227), and by Rhode Island (1414) in Providence, except meetings in control of religious, fraternal or other exclusive organization. Under the latter act fees may be charged if used for the school where the meeting is held; while Massachusetts (86) drops from a similar law provision that no fees be charged at such meetings.

New York (315) authorizes state commissioner of education to enter into contract with district board of a district in which there is a normal school for the education of children in such district.

New Jersey (66) requires election of school directors in districts in which there are 1000 pupils to be held in more than one place and requires board to present to each voter at the election a printed copy of the board's annual report and budget for the ensuing year.

Kentucky (24) recodifies the common school law, limits (8) changes of text-books to three branches per year and permits (81) adjacent counties to maintain joint high schools.

L. AGRICULTURE.

Maryland (675) incorporates an agricultural society to develop agricultural resources of the state, and Massachusetts (Res. 106) creates a commission to study its agricultural resources.

Maryland (698) and Kentucky (H. 62) regulate the purity and sale of seeds.

Rhode Island (1400) authorizes the organization of cooperative agricultural associations, and South Carolina (H. 1616) submits to the voters the question of issuing \$10,000,000 of rural credit bonds.

Maryland (391) creates a state agricultural board of nine appointed by the Governor. New Jersey (268) creates a state department of agriculture under an unpaid board of eight selected by a convention of delegates from specified agricultural societies and (269) transfers to the new department powers and duties of existing officers. Oklahoma (initiated constitutional amendment, adopted 1913, p. 122) provides for a board of agriculture of five, chosen according to law. A previous initiated law

(adopted 1912, p. 115) provided that the members of the board should be elected by a state institute composed of one delegate from each county institute.

Virginia (S. 373) establishes a bureau of markets in the department of agriculture, and New York (586) creates a bureau of farm settlement in its department to "promote the settling by desirable immigrant rural laborers . . . in farm sections" and generally to bring immigrant laborers into the farm districts, even to the point of corresponding with prospective immigrants in foreign countries.

M. WEIGHTS AND MEASURES.

Maryland (31) provides for state supervision of the instruments for applying the Babcock test to milk and cream bought on the basis of percentage of butter-fat therein and their use. Massachusetts (151) provides a procedure by which wholesale milk dealers may have the containers of purchasers tested by public officers and the capacity stamped on the container.

Massachusetts (157) provides that legal weight of bread loaves shall not apply to bread sold in wrapper marked with net quantity. New Jersey (181) requires the net quantity of food packages to be marked thereon in terms of weight, measure or numerical count. Reasonable "tolerance" as to small packages allowed by the United States laws and regulations is authorized. A similar law was enacted in Maryland (667).

The grading, packing and shipping of apples is regulated by Maryland (627) and Kentucky (79).

Rhode Island (1387) defines a legal bushel for farm produce.

N. MILITARY AND NAVAL AFFAIRS.

Congress (85) reorganizes the U. S. army; increases regular forces to 64 regiments of infantry, 25 of cavalry, and 25 field artillery, the increase to be made in five annual increments and thereafter the full strength to be maintained; makes enlistments seven years, three in active service and four on reserve; provides for organization and training of state militia and for training camps. This act authorizes a board to investigate government manufacturing of arms and munitions, and another board to

investigate awards of medals of honor, and makes it a misdemeanor for a person found not to be entitled to a medal to make use of it. The Secretary of War is authorized to acquire utensils for the manufacture of arms, and the President is authorized to determine the best means for production of nitrates and to construct power plants for their production, for which purpose \$20,000,000, to be derived from the sale of Panama Canal bonds, is appropriated. Congress (No. 69) increases cadets at West Point to two from each Congressional district and territory; four from District of Columbia; two from Porto Rico; four from each state; 80 from U. S. at large, 20 of whom shall be selected from educational institutions to which army officers are detailed for military instruction; and as nearly as possible equal numbers from regular army and National Guard of men between 19 and 22 who have served a year; but the total number at the academy from the army and guard shall not at any time exceed 180. The increase is to be distributed into four annual increments as nearly as practicable equally distributed among the sources from which the increased appointments are authorized. Congress (No. 18) increases the number of midshipmen at Annapolis by authorizing three for each senator, representative and delegate in Congress, one for Porto Rico, two for District of Columbia, 10 appointed annually each year at large and 15 appointed annually from enlisted men in navy.

Congress (No. 79) authorizes Secretary of War to issue supplies and stores for maintenance of military instruction camps for students of educational institutions to which army officers are detailed as instructors in military tactics.

Congress (No. 56) establishes in the War and Naval departments the "army and naval medal of honor roll." Survivors over 65 who have been awarded medals of honor for gallant conduct in conflict with an enemy "at the risk of his life above and beyond the call of duty" are to be entered on the roll and are to receive a special pension of \$10 monthly for life.

New York (566) creates a military training commission to cooperate with the state board of regents in devising school courses in physical training and to give military training for not exceeding three hours each week during the academic year, or in case of non-pupils between September 1 and June 15 to boys over

16 and not over 19. Boys exempted by the commission and those regularly employed for a livelihood are excepted unless they volunteer. Provision is made for field training during the summer months and for use of state armories, school buildings and state-supported fair grounds. The military training commission is required (567) to recommend to the board of regents for their adoption courses of instruction in physical training for male and female pupils over eight. This instruction is required to be given as part of the prescribed course and private schools which fail to provide it shall not be deemed to have given "substantially equivalent" instruction to that in the public schools. State aid to local school boards in the amount of one-half the salaries paid to physical training instructors is authorized.

Massachusetts (90) creates a commission to investigate physical training for boys and girls in the public schools and to recommend among other things the system which will provide "an adequate basis for citizen soldiery" with special reference to the following subjects: physical and disciplinary training, military history, personal hygiene and sanitation. New Jersey (211), after a long preamble dealing with the need of a "trained citizenry" and the beneficial, educational and physical effects of military training, creates a commission to study military training in the high schools. Maryland (33) also creates a commission to investigate military education for boys between 14 and 21, the advisability of requiring all males fit for military service to give limited period to service in the militia, the practicability of creating a military reserve and similar subjects.

In view of the opposition of labor unions to the use of the state militia in labor disturbances it is interesting to note the amendments in New York of the military law (355) and of the code of criminal procedure (353) which take from the sheriffs, mayors and judges of the Supreme Court power to call out the militia and confines this power to the Governor, and the creation by Massachusetts (Res. 92) of a board to study the possibility of creating a state police, thereby relieving the militia from strike duty.

The campaign for preparedness has produced a number of laws dealing with the state militia. Detail amendments, interesting chiefly for the emphasis which they put on the Governor's power as commander-in-chief, were enacted in New Jersey (165) and

Massachusetts (284). The latter act authorizes the establishment of recruiting depots in time of war or while the militia is in the active service of the United States. New York reorganized and increased the strength of the militia (564) and of the naval militia (565).

Massachusetts (170) creates a reserve list of officers of the militia and of the naval militia. New York (470) authorized the Governor to detail officers from the retired list to active duty and to return them to such list.

New York (568) authorizes the Governor to organize the reserve militia (which by existing law was composed of all those liable to military service), or designated classes thereof or volunteers. The Governor is expressly authorized to draft or call for volunteers in case of insurrection or riot or imminent danger thereof as well as for the service of the United States. The Governor is authorized to draft or call for volunteers in order to bring the guard to "the standard of efficiency required for public safety" or to make it conform to the organization prescribed by United States laws.

Kentucky (43) recodifies the militia law, provides for the calling out and organization of the reserve militia in case the National Guard is unequal to an emergency, and authorizes the Governor to enroll all able-bodied males between 18 and 45 subject to military duty.

Massachusetts (127) authorizes the transfer of any organization of the volunteer militia to any volunteer military force other than the regular army which may be authorized by Congress. No such transfer is to be effective if a majority of the officers and enlisted men, within 30 days after notice from the Governor, reject it. This act authorizes the Governor to permit the use by United States volunteer forces of the military and naval property of the state.

Provision for the more advanced arms of the service is made by New York (474), which regulates the signal corps, providing among other things for radio companies and an aero company, and by Massachusetts (123), which authorizes the acceptance of donated aeroplanes and provides for their operation.

In order to provide for such organizations as the Harvard Regiment, Massachusetts (8) authorizes students enrolled in a

military organization over which United States or state military authorities have supervision to drill and parade with firearms in public.

Massachusetts (209) requires the volunteer militia to perform not less than 14 days' training annually and (126) provides that state officers and employees may receive pay for service in the militia without loss of usual compensation from the state and in addition shall be entitled to the same leave of absence with pay as is given to other state officers. South Carolina (H. 556) provides for payment of guard while attending drills.

Other detailed amendments to the military laws are contained in New York, 467, 468 and 471.

South Carolina (H. 1220) provides for government of militia to conform to U. S. requirements; Mississippi (S. 558) is a military code.

O. PROTECTION OF THE FLAG.

Mississippi (S. 396) and South Carolina (H. 920) punish desecration, mutilation or improper use of the United States flag.

Massachusetts (36) amends the law relating to the use of the flag for advertising purposes by excepting publications giving information as to the flag or intended to promote patriotism or encourage study of American history, provided no marks be placed on flag.

P. HIGHWAYS AND MOTOR VEHICLES.

South Dakota (2d Special Session) submits constitutional amendment declaring that construction and maintenance of good roads and supplying of coal to the people are works of necessity in which the state may engage, but that no expenditures therefor shall be made without two-thirds vote of the legislature.

New Jersey (285) refers to voters the creation of a highway commission and authorization of 13 routes for construction of roads across state. Maryland (575) and Mississippi (H. 293) create state highway commissions.

New Jersey (24) gives to pedestrians a right of way over vehicles at street crossings where houses are on average less than 100 feet apart.

Massachusetts (124) penalizes improper spreading of tar, oil, etc., on public highways. Maryland (42) punishes obstruction of highways with nails, etc.

New or revised laws licensing and regulating motor vehicles were passed in Rhode Island (1354), Georgia (No. 12, extra session, 1915), and Mississippi (S. 67). Special licenses for dealers and manufacturers are provided for in New Jersey (216), and (137) does away with the two classes of drivers' licenses and provides that the fee for all licenses shall be \$3, irrespective of horse-power.

New Jersey (142) creates office of commissioner of motor vehicles and increases the inspection force from 30 to 75 by adding special inspectors who serve without pay but with full powers; requires (103) that not only the driver's license but also the owner's registration certificate be correct and shown to inspector on demand; and (163) that motor vehicle accidents involving loss of \$10 or more be reported to the commissioner of motor vehicles.

Massachusetts (290) imposes added regulations on intoxicated drivers in case of accident, and Virginia (H. 397) prohibits operation of motor vehicles by such drivers.

New Jersey (114) prohibits muffler cut-outs.

Rhode Island (340) forbids motor vehicles being used to draw other vehicles of over two tons on state highways without special permit.

Massachusetts (42) grants special privileges to owners of automobiles residing in other states but within 15 miles of Massachusetts line for operation of their cars in Massachusetts within 15 miles of the boundary of the state, provided state of residence grants like privileges to residents of Massachusetts.

New York (72) provides for registering and regulation of motorcycles, but does not apply to motorcycles registered in other states which extend similar privileges to residents of New York. The act is exclusive and strictly limits local regulation of the use of highways by motorcycles.

New Jersey (148) makes it a misdemeanor to ask or give commissions by garage keepers, repair men, etc., to chauffeurs and mechanics on bills for storage, repairs, etc.

Q. TAXATION.

Massachusetts (269, see also 300) imposes an income tax. Incomes from investments, except from savings deposits bonds of the United States and of the state and its subdivisions, are taxed 6 per cent. Incomes from trades, professions and business are taxed $1\frac{1}{2}$ per cent on the excess over \$2000.

Massachusetts (242) imposing a license tax on peddlers excepts wholesaler or jobber having permanent business place in the state and selling to dealers only and agents selling at wholesale by sample.

Rhode Island (1339) imposes a tax of $1\frac{1}{2}$ per cent on excess over \$5000 of decedent's real estate "as a tax upon the right to transfer," and an additional tax on transfers without adequate compensation of real and personal property "as a tax upon the right to receive." The tax varies from 1 per cent to 3 per cent on transfers to specified direct and collateral heirs and from 5 per cent to 8 per cent on other transfers. The exemption for specified heirs is \$25,000 and for others \$1000. Massachusetts (268) adds to its succession tax law a new class of beneficiaries, consisting of persons other than relatives specified in the preceding classes, and imposes a tax graduated from 5 per cent to 10 per cent in the new class. Kentucky (26) is a progressive inheritance tax law.

New York (261) amends the secured debts tax by exempting from all taxes for five years secured debts on which before January 1, 1917, a tax of 75c. per \$100 is paid.

Virginia (64) prohibits suits to restrain assessment or collection of state or local tax except where there is no adequate remedy at law.

Oklahoma (initiated Const. Amend. adopted, p. 119) requires property taxes for school purposes levied on public utility companies operating in more than one county to be paid into the common school fund.

Virginia (215) converts the state advisory board on taxation into a state tax board with power to supervise local tax officers, and contains detailed provisions as to valuation. Mississippi (H. 395) creates a state board of tax commissioners and regulates assessments.

R. CONSERVATION.

Three states adopted laws for the prevention of forest fires. Massachusetts in a new act (51) provides that the written permission of an authorized fire official must be obtained before open fires may be built, between the first day of March and the first day of December. The burning of debris from fields and orchards and like fires are permitted without official sanction. New Jersey (44) amends the existing law by providing a more severe penalty for a wilful than for an innocent violation of the fire law and gives power to the board of conservation and development in its discretion to permit the person who violates the law to pay the cost of extinguishing the fire or other expense less than the minimum fine. Virginia (268) increases the penalty for setting fire to woods or any inflammable substance on lands whereby damage is done to the property of others, and extends the provision to cover cases in which property of others is "jeopardized."

Maryland (682) creates a conservation commission to control its fish, bird, game and fur-bearing animal resources. Virginia (152) creates a department of game and inland fisheries to enforce fish, game and forestry laws and to "foster the preservation of all wild life in the state." New York (451) amends generally the conservation law regulating public lands and forests.

S. LIQUOR LAWS—PROHIBITION.

Maryland (30) submits the question of prohibition to voters at the 1916 November election.

Georgia (Extra Session 1915, No. 2) forbids advertisement of liquors or solicitation of orders therefor, and (No. 3) provides for more rigorous enforcement of prohibition laws with particular reference to duties of and penalties on residents and property owners, and (No. 4) regulates the shipment and receipt of limited quantities of liquors. Virginia (146) is a comprehensive prohibition law, passed in pursuance of a constitutional amendment, forbidding manufacture, sale, advertisement, etc., creating the office of commissioner of prohibition for its enforcement, and in various ways, including simple form of indictment, liability for damages done by intoxicated persons, etc., discouraging violation of its provisions. Mississippi (H. 255 and H. 264) prohibit

advertising and soliciting orders and provide for regulation of liquor traffic and enforcement of the prohibition laws.

Massachusetts (168) penalizes delivery of liquors in a town where licenses for sale of such liquors are not granted, even though such delivery be by a person licensed to sell in other towns.

Maryland (30) provides for local option in specified cities and counties.

Kentucky (14) regulates licensed liquor dealers and forbids any screen or other obstruction interfering with full view from the street of rooms where liquor is sold.

T. MOTION PICTURES.

Maryland (200) creates a state board of motion picture censors, makes it unlawful to show any unapproved film and requires the board's approval to be stamped on the film and shown on the screen. Provision is made for appeal, after re-examination by the board, to the Baltimore City Court. The act does not apply to the use of films for educational, religious and like purposes by described institutions.

Massachusetts (118) permits second and third class construction for moving picture buildings where the apparatus is operated with cellulose acetate films of a fixed width and using an enclosed incandescent lamp, and New Jersey (276) authorizes the use of portable booths for temporary exhibitions for church and like meetings.

U. HEALTH AND SANITATION.

Virginia (148) regulates the practice of optometry and (84) of medicine and surgery. Maryland (173) regulates osteopathy and (522) chiropody. Kentucky (35) prohibits "buying and selling of patients by physicians." New York (328) requires applicants for physicians' licenses to have certificates of the completion of a four-year high school course or its equivalent before commencing their first year of medical study.

Rhode Island (1382) requires physicians and other persons having knowledge of infectious and contagious diseases to report them to town health officer, who in turn reports them to the state board. Other laws requiring reports in the interest of health are New York (370, 515) and Massachusetts (53).

Provision for the care of needy sick is made in New Jersey (214), which requires the state to contribute three dollars weekly for each person maintained by a county in a hospital, and by authorizing (202) municipalities to employ visiting nurses. Rhode Island (1405) authorized Providence to appropriate not exceeding \$5000 annually to the support of the Providence Nursing Association. New York (413) provides for a town physician to render medical relief to poor persons at the request of town officers, and (371) provides for the care in a hospital or private family at public expense of a person duly declared to be a carrier of typhoid and, therefore, quarantined or prevented from carrying on his usual occupation. California (Res. 6) endorsed a bill pending in Congress providing federal aid for indigent non-resident tuberculosis patients cared for in hospitals conforming to federal standards.

Massachusetts (Res. 157) creates a social insurance commission to study the effects of sickness, unemployment and old age, and (Res. 112) a commission to investigate the use of habit-forming drugs and the effectiveness of preventive laws.

For the general improvement of the public health New York (408) authorizes in certain counties a mosquito extermination commission and declares that an accumulation of water in which mosquitoes are likely to breed is a nuisance. New Jersey (233) forbids the construction of burial vaults above ground without the consent of the local board of health.

One of the most important regulations of individual liberty in the interest of public health in recent years is contained in Virginia (226) which provides that tubercular persons who by their habits place others in danger of infection may be summoned before a local court by a health officer and detained or required to give bond to cease the practice complained of for a period of one year. New Jersey (32) authorizes counties to employ nurses to discover and investigate tuberculosis cases and to give instructions to prevent the spread of the disease.

Virginia (160, 278) prohibits the use of common towels in public washrooms, and defines a common towel as one "intended or available for common use by more than one person without being laundered after such use." This makes laundering the test. If a towel is laundered after "common use by more than one

person" it is not a "common towel." Maryland (18) requires toilet accommodations in cars of electric railways operating over six miles.

New York (372) authorizes the state commissioner of health to recover in any court of competent jurisdiction civil penalties for violation of health regulations.

V. PURE FOOD LAWS.

New Jersey (101) and Maryland (163) require licenses for cold storage warehouses issued only after inspection of sanitary conditions, and Virginia (50) establishes sanitary standards for and requires licensing of slaughter houses not licensed by United States, but excepting "sound and wholesome" meats raised and offered for sale by farmers.

Virginia (9) prohibits sale of human food articles prepared or kept under unsanitary conditions, forbids (12) unsanitary conditions in transportation or storage of food for man or animal, and provides (267) for prosecution of violations. Kentucky (37) also regulates sanitary conditions under which foods are prepared and sold.

Virginia (18) prohibits keeping or selling of oleomargarine or renovated butter unless kept separate from butter in a manner to show its different character.

New York (144) requires 10 per cent milk fat in unsweetened evaporated or condensed milk sold in containers not hermetically sealed. Milk and cream, previously excepted from pure food laws, are subjected thereto by Rhode Island (1341). Regulation of the Babcock test for milk purchased on the basis of percentage of butter fat is imposed on the Agricultural Experiment Station in New Jersey (31), and New York (219) provides, for the protection of the producer, that purchasers of milk on the basis of milk fat content shall keep duplicate samples, one of which the producer may demand for analysis at Cornell Dairy Department. Massachusetts (134) authorizes inspectors to take samples of milk wherever produced, stored or transported but not to interfere with interstate commerce.

Kentucky (44) provides for analysis, etc., of foods by state agencies for the enforcement of the pure food laws, supplying the place of a section declared unconstitutional for defective title.

Virginia (46) directs the state food commissioner to mark off polluted oyster and clam beds and thereupon makes it unlawful to take shell fish therefrom. This act contains the remarkable provision that a person violating its provisions may pay the officer who apprehends him a sum agreed upon between them, provided it be not less than the minimum fine for the offense, "and thereupon such person shall be discharged from all legal proceedings that may be instituted against him for such offense."

W. LABOR.

1. Administrative Organization.

Maryland (406) creates a state board of labor and statistics to take the place of existing agencies administering labor laws and to administer new laws respecting public employment bureaus and industrial disputes. New Jersey (40) reorganizes the department of labor. All officers and employees in the new department except the commissioner are placed in the classified civil service. The commissioner is expressly authorized to transfer clerks from one bureau to another to facilitate the efficient performance of the work of the department. Volunteer inspectors without compensation may be appointed with the same rights and powers as paid inspectors.

Massachusetts (308) transfers to the state board of labor and industries the power to investigate and regulate the safety and sanitation of work places in the interest of prevention of accidents and occupational diseases which is now exercised jointly by that board and the industrial accident board.

2. Wages and Hours.

Massachusetts (208) provides that a married man's assignment of future wages shall not be valid unless his wife's written consent is attached thereto.

Massachusetts (229) amends existing law providing for weekly payment of wages by limiting the hotels to which it applies to those in a city.

New York (151 and 152) amends the provision that contracts for public work shall be void unless the contractor observes the

eight-hour-day law, and provides that the first offense against that law shall be punished by fine or imprisonment, but that for the second offense the contract shall be forfeited and no payment shall thereafter be made thereon.

Massachusetts (240) requires forty-eight-hour week as well as eight-hour day for public employees and employees on public work subject to acceptance by council of cities and voters of towns. Maryland (134) makes nine hours a day's work on the roads of a specified county.

Maryland (147) permits employment of women in certain mercantile establishments for 12 hours a day on Saturday and the six days preceding Christmas, provided two rest periods of one hour each be allowed on such days, and (147) prohibits employment of women between 6 P. M. and 6 A. M. more than three days a week.

Massachusetts (Res. 74) requires the state labor board to investigate hours and conditions of labor in hotels and restaurants and report on desirability of one day's rest for employees thereof, and (Res. 164) requires the social insurance commission to study hours of labor in continuous industries.

South Carolina (H. 938 and S. 1144) requires certain corporations to have a regular pay day; Kentucky (21) requires corporations to pay wages semi-monthly. Mississippi (H. 424) amends the semi-monthly wage law and taxes (H. 379) the business of operating "grab cars" or furnishing goods in payment of wages.

South Carolina (S. 625) amends the ten-hour-day law for cotton and woolen mills and limits (H. 671) hours of employees on interurban railways, and (H. 1099) authorizes manufacturing companies to make up lost time to the extent of 60 hours per year.

Mississippi (S. 562) permits the working of night-workers 11½ hours the first five nights and 3¾ hours the sixth, making a total of sixty hours per week.

Massachusetts (303) amends the minimum wage law by providing that one of the members of the commission shall be an employer of women, one a woman and one a representative of labor.

Congress (No. 68) changes the penalty for violation of the law limiting railroad employees' hours from "not less than one

hundred dollars nor more than five hundred dollars" to "not to exceed five hundred dollars."

3. Child Labor.

New York (278) forbids employment in the making of motion picture films of children under 16 without the consent of designated local officer. The officer is required to give 48 hours' notice of application for such consent to the Society for the Prevention of Cruelty to Children and to hold a hearing on the application. Kentucky (23) permits non-resident children to appear on the stage.

The issuance of employment certificates in the enforcement of child labor laws is dealt with by several amending acts: New York (465) strikes out the provision making school certificates evidence of a child's age and inserts a provision that if the evidence submitted with the application shows the child to be 14 but not 15 no certificate shall issue unless in addition to all other requirements the child presents a certificate of graduation from a public or other designated school. This makes the graduation certificate a condition precedent to the right of a child under 15 to work. Rhode Island (1378) provides that employment certificates where the child's application shows his right thereto shall be issued not to the child but to the employer who files with the issuing officer a written statement agreeing to employ the child and to return the certificate to the issuing officer on the termination of such employment.

Massachusetts (66) authorizes the granting of employment certificates good for the summer vacation to children over 14 who do not possess the educational requirements required for certificates generally.

The progress of vocational education is evidenced by New Jersey (242) authorizing special "age and school certificates" for pupils over 14 who study part time in vocational schools to work in factories. Such employment is to constitute part of the child's schooling. Massachusetts (95) amends existing law authorizing cooperative courses in the public schools and cooperating industrial and mercantile establishments and provides for a special certificate for pupils between 14 and 15, authorizing them

to work in the cooperating establishments. Pupils in cooperative courses are also excepted from the law prohibiting the employment of children over 16 but under 21 unless the employer keeps on file an educational certificate showing the child's ability to read and write.

South Carolina (H. 223) amends the law relating to the labor of children in factories, etc.

Massachusetts (242), providing for licensing of peddlers, allows children under 16 to obtain permits to sell only those things which peddlers may sell without a license.

4. Safety and Sanitation.

New York (424) makes it a misdemeanor for steam or electric railroads to employ in the operation of trains an engineer, fireman, etc., who is unable to read, hear or understand the English language or to see and understand signals.

New York (466) excepts from the requirement of fire alarm systems and fire drills those factories wholly protected by approved automatic sprinkler systems, provided the maximum number of occupants on each floor does not exceed by more than 50 per cent the capacity of exits.

New Jersey (260) provides that within two years all passenger elevators shall be equipped with automatic safety devices preventing movement of the car until doors are closed.

Massachusetts (115) requires mercantile and manufacturing establishments, where nature of work necessitates "substantially complete change of clothing," to provide separate lockers for their employees.

Minor amendments in the safety and sanitation laws are contained in Massachusetts (154), New York (62) and Rhode Island (135).

Mississippi (H. 326) prescribes the number constituting a full train crew, and South Carolina (S. 959) makes it a misdemeanor to violate the law requiring separation of the races in factories.

Virginia (S. 366) requires foundries to provide adequate wash-rooms and toilets.

Virginia (H. 238) amends existing law regulating ventilation of coal mines.

5. Mediation and Arbitration of Labor Disputes.

Maryland (406) authorizes the state labor board to appoint a chief mediator and to promote voluntary arbitration of industrial disputes. The board may, subject to the Governor's approval, appoint arbitration boards which are authorized to conduct investigations and enforce attendance of witnesses and production of testimony and to publish a report of their findings for the settlement of the dispute.

South Carolina (H. 1368) creates a conciliation board for the settlement of industrial disputes.

Massachusetts (89) provides that the law prohibiting advertisements to secure new employees without plainly stating the existence of a strike or lockout shall cease to be operative when the state board of conciliation determines after hearing, at which all parties shall be heard, that the employer's business is being carried on in the usual manner, that is, that the strike has terminated.

6. Unemployment and Employment Agencies.

California (Res. 8) endorsed the recommendation of the United States Labor Department that by financial aid and otherwise the unemployed be encouraged to take up homes on the public lands. Maryland (406) authorizes the state labor board to investigate extent and causes of unemployment and the remedies therefor.

This Maryland act also authorizes the state board to establish free employment agencies in such parts of the state as it deems advisable.

Virginia (168) amends existing law regulating private employment agencies by providing, among other things, that fees paid by applicants who fail to obtain employment within 30 days shall be returned and that the sending of women to places of ill-repute shall constitute a felony, and (S. 151) imposes an annual license tax on labor agencies.

Massachusetts (Res. 157) directs the social insurance commission to study unemployment.

7. Workmen's Compensation.

Kentucky (33) enacts an elective workmen's compensation law for industries other than agriculture and domestic employment employing five or more; requires acceptance of the act by employer and employee to be by written notice; takes from the employer who fails to elect his common law defenses and leaves these defenses against the employee who fails to elect; fixes the rate of compensation generally at 65 per cent of wages; requires approved self-insurance or insurance in a private company or mutual organized as provided for in the act; creates a workmen's compensation board to administer the act and to pass upon disputes, subject to limited appeal to the courts, and creates the "Kentucky Employees' Insurance Association" for the insurance of employers under the act. This act takes the place of a previous compensation act declared unconstitutional by the state Supreme Court.

New York (622) extends its workmen's compensation law previously applicable only to listed hazardous employments to employees not engaged in hazardous occupations and their employees who elect to become subject to its terms. The employer elects by posting notice. The employee's election is presumed from failure within a stated time to file written rejection.

Maryland (86) provides that a mine worker shall be deemed to be employed in Maryland and entitled to the benefits of its workmen's compensation act if the principal mine entrance is in the state, notwithstanding that the employee is injured or killed while working at a point actually within another state. Massachusetts (307) corrects a drafting defect in the existing law which on a strict interpretation would have confined the compensation law to employees of municipalities.

Massachusetts (80) reduces the waiting period from two weeks to 10 days.

New York (622) authorizes compensation for "serious facial or head disfigurement." Insurance carriers are required to pay to the state treasurer \$100 for every accident resulting in death for every compensable death case in which there is no person entitled to receive compensation. These payments are to be held in a special fund and used to pay additional compensation for

life to employees who, after suffering permanent partial disability, subsequently sustained injury resulting in permanent total disability.

Maryland (368) extends the benefits of its law to alien non-resident dependents on the same basis as residents, except that future payments may be commuted by payment of a lump sum equal to three-fourths of their present value, and (597) makes other changes in the existing compensation law. New York (622) limits the non-residents entitled to compensation to surviving wife or child, or if none, surviving parent or grandparent whom the employee has supported wholly or in part for one year prior to the accident.

New Jersey (54) adds an interesting variation to the tendency to take cases involving the right to or the amount of compensation out of the courts and provide for their settlement by administrative commission. The New Jersey act leaves disputes to be settled by the courts, but it creates a "workmen's compensation aid bureau" in the labor department, which is required generally to observe the operation of the compensation law and particularly to assist employees in recovering their just compensation. On notice of injury the bureau is required to ascertain and preserve for use in court the facts relating to the accident. Agreements between employer and employee are made subject to the approval of the bureau which is authorized to attempt to bring about such agreement. If settlement be delayed by the employer or his insurer and no proceedings be begun by the beneficiary, the bureau is authorized to certify the facts relating to claims arising from the injury to the county court, which statement operates as a petition. The court may assign counsel to represent the claimant and if it be found that the delay in settlement was without reasonable excuse the claimant's expenses, including legal services and loss of time while prosecuting his claim, shall be assessed as a penalty against the employer or his insurer.

Massachusetts (72) makes the report of a physician appointed by the industrial accident board to examine an injured employee admissible in evidence provided the employer and insurer have been furnished with copies thereof.

New York (622) limits appeals to the Court of Appeals in compensation cases to cases in which the appellate division's

decision is not unanimous, or consent to the appeal is given by the appellate division or by a judge of a court of appeals.

New York (478) provides that contracts for public work shall contain a stipulation that the contract shall be void unless the contractor insures compensation to employees on such work who are within the compensation law. New York (622) makes it a misdemeanor for any employer to fail to insure the payment of compensation in one of the ways provided by the act. This latter act also authorizes the inclusion in one policy of employers who perform labor and their employees. For other acts dealing with insurance of compensation, see *Insurance*.

New York (622) puts the whole cost of administering the workmen's compensation act on the industries to which it applies by providing that after July 1, 1917, the industrial commission shall annually compute the expense of administering the compensation law (including apparently the expense of operating the state insurance fund) and assess insurance carriers, including the state fund, that proportion of such expense which the total compensation paid by such carriers respectively bears to the total compensation paid by all carriers.

The possibility of restoring the earning power of injured employees is recognized in Massachusetts (Res. 75), which requires the board of education to report to the next legislature on facilities for special training and instruction to persons whose earning capacity has been destroyed or impaired by injury.

Virginia (S. 32) makes intrastate carriers liable for injuries to employees.

Massachusetts (Res. 157) creates a social insurance commission to study sickness, unemployment and old age of wage-earners.

X. INSURANCE.

Massachusetts (12) authorizes substitution of inspection by a competent person for medical examination in the case of a group of not less than 100 employees as a basis for issuing to their employer one policy on their lives.

New York (360) increases the amount of new business which may be written by life companies. Generally this increase is 5 per cent of the total amount of insurance in force in preceding

year. It is also provided that in determining the amount of new insurance, group insurance, covering groups of not less than 100 lives in the employ of the same person, shall be excluded.

New York (119) changes from $\frac{1}{2}$ to $\frac{1}{4}$ of 1 per cent the amount by which the contingency reserve of domestic life insurance companies shall decrease for each additional \$5,000,000 over \$20,000,000 of net value of policies; and provides that if net values exceed \$50,000,000 the contingency reserve shall not exceed $7\frac{1}{2}$ per cent. New York (120) amends the limitation of life insurance companies' expenses by providing that companies which have changed from stock to mutual or from non-participating to participating may incur expenses in addition to the general limitation not to exceed 6 per cent of aggregate net premiums. This takes the place of previous authorization of excess expense for such companies not greater than the excess of 25 per cent of net premiums over loadings collected on business prior to the date of the change. This amendment also provides that no mutual company shall issue after June 30, 1916, any life or endowment policy other than group insurance or reinsurance on which the premium loading is less than would enable the company to comply with the provisions limiting total expenses, if the premium loading of all its policies were calculated according to the rule employed by the company for calculating the loading of such policy.

New York (121) extends for five years, from December 31, 1916, the time within which domestic life companies must dispose of stocks other than those of municipal corporations and of bonds not secured by adequate collateral.

Massachusetts (47) forbids, after January 1, 1917, life or endowment policies (except industrial policies) providing for loans or surrender values unless the company is authorized to defer such loans (except when they are for the purpose of paying premiums and surrender value) for not exceeding 90 days from application. Such companies are authorized to insert such a provision in their policies at any time after the passage of this act. Foreign companies may issue policies containing the deferred loan or surrender value provisions of their own states; and Massachusetts companies doing business in other states may

issue policies in such states containing provisions with respect to such deferring required by the laws of such states.

Virginia (165) provides that premiums paid on life insurance taken by a borrower as additional security for a loan by an insurance company on mortgage or other security shall not be considered as interest on loan, and shall not render the loan usurious.

New York (393) provides that dividends on expired policies of mutual employers' liability and workmen's compensation companies shall not be distributed until approved by the superintendent of insurance. This act also requires foreign mutuals authorized to write this business to maintain a surplus, over liabilities including unearned premiums and loss reserves, of \$100,000, under penalty of revocation of such company's authorization to do business in the state.

Maryland (254) prohibits insurance companies or their agents issuing or circulating statements misrepresenting terms of policies or benefits thereunder. Life, health and accident companies and their agents are forbidden to make any misrepresentation to induce the taking out or surrender of a policy. This act also declares that agents of industrial companies shall not be deemed the owner of the periodic "debit" collected by them and forbids such agents to sell "or in any manner switch" such debit without the company's consent.

Massachusetts (28) provides that accident insurance policies may, at the option of the insured, provide that benefits for death or disability shall be payable in instalments. In such case the policy is to contain the total sum, the number, amount and time of payment and the time, not exceeding 60 days, from proof of first payment.

Massachusetts (150) adds to the standard fire policy provision that limitation of action thereunder to two years after loss shall not apply if within that time the loss is referred to arbitration, in which case the limitation shall be 90 days after award or waiver of award, or, if action be enjoined or abetted, one year after dissolution of injunction. Virginia (99) provides that suicide or legal execution shall not be a defense to a life policy issued to a resident or otherwise subject to the laws of the state unless the policy contains express limitations to the contrary. This applies to policies issued before the act takes effect if the

language thereof is "sufficiently comprehensive" to cover death by suicide or execution. This act cannot be avoided by providing that the policy shall be construed according to the laws of some other place. If, however, it be shown that at the time of taking out the policy the insured intended suicide there shall be no recovery for such suicide.

Maryland (275) makes fraudulent certificates of death, sickness, etc., by insured persons a misdemeanor.

South Carolina (H. 1572) prohibits fire companies combining with other companies.

Kentucky (19) creates a state insurance board to supervise rate bureaus and codifies insurance regulations, regulates fraternal benefit societies (27) and assessment and cooperative fire companies (28) and authorizes (55) cooperative assessment life or casualty companies to reorganize on stock or mutual plan, and (56) regulates the latter companies.

Mississippi (S. 185) requires fire, casualty, etc., policies to be countersigned by a resident agent, reduces (H. 373) credits allowed on premium taxes of life insurance companies, and (H. 362) provides for supervision of domestic fraternal benefit societies.

New Jersey (127) authorizes county officers to establish fire insurance funds for county property, to be administered by a committee of the county officers. Insurance may be placed with companies when the officers deem it desirable.

New York (13) provides for the organization of mutual automobile casualty insurance companies with power to insure against accident, theft, and other losses except loss by fire or transportation; and (14) for the organization of mutual automobile fire insurance companies with power to insure against various losses, including theft but excluding personal injuries. Both of these acts authorize certificates to foreign mutual companies. Massachusetts (32) authorizes suretyship, fidelity and burglary companies to insure in one contract banks and brokers against loss of notes, securities, documents and money, except loss in transportation.

Massachusetts (200) provides that mutual liability companies, with insurance commissioner's approval, may exercise rights and privileges in relation to workmen's compensation business which

are by law vested in the Massachusetts Employees' Insurance Association, and that such association, with the commissioner's approval, may exercise in or outside the state the privileges vested in domestic mutuals under general laws and be subject to laws "now or hereafter in force" relating to such mutuals.

New Jersey (87), amending existing law, authorizes insurance companies to do the following additional business: (1) damage to automobiles or to property resulting from their operation; (2) health insurance, including not exceeding \$100 funeral benefits; (3) loss to automobiles by collision or legal liability for damages resulting from such collision; (4) loss by banks, etc., of bills, securities, coin, etc., except loss from marine or transportation risks; (4) loss by non-payment of mortgage or interest thereon; (5) loss due to leakage of fire extinguishing apparatus. In addition to the bankers insurance, which it is the purpose of this law to divert from Lloyds to domestic companies, this act authorizes companies guaranteeing mortgages to buy and sell first mortgages, issue bonds thereon, and make use of the term "guarantee company." Whether intended or not, one of the important things accomplished by this amendment seems to be authorization of the inclusion in one policy of insurance against accident, health, including funeral benefits, damages due to automobile collisions and indemnity against legal liability from accident involving injury to others. In addition, life insurance companies by reason of this amendment and the general law are authorized to insure not only against accident and ill-health, but also against loss to vehicles resulting from collision or liability for damages to others in such collisions.

Massachusetts (29) forbids licenses to a foreign insurance company until it has filed with the commissioner a bond covering a future period at least as long as that covered by the license.

New Jersey (224) requires foreign insurance companies in their annual statements to report premiums received and paid by them for re-insurance, and the total of re-insurance premiums is to be deducted from gross premiums in fixing the amount subject to tax. This tax is to be in lieu of all other franchise taxes. Taxes paid by such companies to police pension fund shall be considered part payment of the tax under this section.

New York (590) provides that the superintendent of insurance may, on application of a domestic company desiring to do business in another state, issue a certificate that similar companies of that state may be permitted to do business in New York. This act is limited to applications of companies which have had 40 years' experience, whose members are confined to one fraternity, whose annual management expenses is limited to 20 per cent of cash income, whose assets are equal to liability and contingent reserve liability (to be determined as provided by the act), of which \$100,000 in specified securities shall be deposited with the superintendent.

Massachusetts (135). The act authorizes provision in the policies of domestic or foreign companies for waiver of premiums or special surrender values in case *either* of the insured persons becomes disabled. This act authorizes payment of a larger sum where death is caused by accident, provided such sum does not exceed on any one life 3 per cent of the company's aggregate expected mortality as shown by its last statement to the insurance department and provided the consideration for this special benefit is separately stated in the policy.

Y. BANKS AND BANKING.

Congress (No. 75) amended the Clayton Act by authorizing officers, directors or employees of member banks, or Class A directors of reserve banks, with the consent of the Federal Reserve Board, to become officers, directors or employees of not more than two other banks, banking associations or trust companies organized under United States or state laws and not in "substantial competition" with the member bank.

Congress (No. 81) amends the Postal Savings Act by increasing the interest-bearing deposits of an individual from \$500 to \$1000, by permitting the acceptance of an additional \$1000 without interest and by removing the limitation of \$100 a month on an individual's deposit. Member banks of the federal reserve system are given preference as depositors. A portion of this act is obviously intended as an amendment to Section 9 of the original act, but does not say so, and for that reason its provisions, which depend on the original act but refer to "this act," may be ineffective.

Rhode Island (1389) increases the criminal penalty for fraudulent checks on banks in which the drawer has not sufficient funds, and makes the issuance of the check *prima facie* evidence of intent to defraud in those cases in which the drawer fails to deposit sufficient funds to meet the check within seven days after he receives notice of the bank's refusal to pay. Mississippi (H. 19) prohibits checks if drawer has insufficient funds.

New Jersey (123) provides that checks or drafts shall be paid by the drawee, notwithstanding the death of the drawer between the times of drawing and presentation, provided presentation be made within 10 days after date.

New York (363) authorizes savings banks to invest in promissory notes of savings and loan associations and in bonds of the state land bank; and (164) makes 60-day withdrawal notices ineffective if withdrawal is not made within 15 days after expiration of such 60-day period.

Rhode Island (1359) levies a tax on interest-bearing deposits in national banks and authorizes the banks to pay the tax and deduct it from interest. The tax commissioners are authorized to publish in the newspapers the names of the banks which pay the tax or the names of those banks which do not pay it. Evidently the purpose is to induce the banks to deduct and pay the tax.

Massachusetts (26) gives the bank commissioner the same power over savings and loan associations as over savings banks, and authorizes examination of such associations at their expense.

Massachusetts (129) authorizes domestic trust companies to accept future drafts and bills of exchange and to issue letters of credit to an amount not exceeding one-half paid-up capital and surplus without the approval of the bank commissioner, and not exceeding such capital and surplus with such approval. Virginia (298) authorizes banks and trust companies to accept drafts and issue letters of credit not exceeding for any one person 10 per cent of capital and surplus.

New York (247) authorizes investment companies to advance money on bonds and notes owned, issued or guaranteed by them, and to purchase and pledge the same to secure payment of collateral trust bonds and notes and to sell and negotiate such trust bonds and notes.

New Jersey (115) gives to banks and trust companies for the purpose of liquidating loans of resident or non-resident decedents secured by securities assigned in blank the same authority as legal representative to have such securities transferred.

Virginia (83) authorizes bankers and brokers to require in advance a minimum discount fee on a negotiable paper of 50 cents on loans of 30 days or more.

New York (96) provides that only those banks and trust companies which do not have unimpaired surplus equal to 20 per cent of capital need report their dividend declarations. Kentucky (74) prohibits bank dividends until surplus equals 10 per cent of capital.

Massachusetts (175) regulates deposits with private bankers and their investment.

Z. PUBLIC UTILITIES.

Massachusetts (266) authorizes certain corporations to operate "trolley-motors" or "trackless trolleys" on public ways or private rights of way subject to consent of local officers; authorizes (92) the public service commission to order reparation with interest where a discriminatory rate has been collected within two years prior to filing of petition for redress, and authorizes (23) cities and towns to appropriate money to prosecute or defend before courts or commissions proceedings relative to rates of public utilities.

Regulation of "jitneys" is provided for in Maryland (610) and New Jersey (136). The latter act, as well as Massachusetts (293), requires applicants for "jitney" licenses to file bonds to pay damages for injuries caused by operation. This is an interesting example of insurance as an aid to enforcement of statute law.

New Jersey (36) permits passes to local police officers. Mississippi (S. 391) prohibits passes on street railways except to specified officers and employees, and Kentucky (1) is a general anti-pass law.

Maryland (272) makes toll bridges over county-dividing streams common carriers.

Virginia (S. 354) requires telegraph messages to be considered as intrastate in certain cases although relayed out of the state.

AA. CORPORATIONS.

Maryland (596) amends existing corporation laws generally. Among the more important provisions are: (1) reduction of outstanding capital stock not to release the liability to the corporation of stockholders whose shares are not fully paid; (2) stock without par value may be issued by companies which do not issue preferred stock, except bank, safe deposit, trust or loan companies; (3) an existing provision penalizing the corporation for refusal to permit stockholders to inspect its books is repealed.

By New Jersey (243) corporations organized or licensed to do business under the laws of the state are required to maintain a principal office in the state in charge of an agent on whom process may be served. Insurance corporations which report to banking commissioner are excepted.

New York (127) requires corporation stock books to be kept open daily three business hours for inspection by judgment creditors or stockholders who hold 5 per cent of outstanding stock or who have been stockholders for six months. That the stockholder applying for an opportunity to make inspection sold or offered for sale a list of the company's stockholders is made a defense to an action for refusal of inspection. New York (53) provides that final orders dissolving corporations must be filed in the clerk's office of the county of principal place of business, and a certified copy with superintendent of banks, superintendent of insurance or secretary of state.

Massachusetts (184) provides that voluntary associations created by written instrument or declaration of trust, the beneficial interest in which is divided into transferable certificates or shares, may be issued for debts incurred by the trustees or their agents or for damages due to their negligence, and the property of the association subjected to attachment and exclusion in the same manner as if it were a corporation. Service of process on one trustee is sufficient. New Jersey (191) enacts the uniform transfer of stock act.

Mississippi (H. 191) requires corporations doing intrastate business to incorporate under the laws of the state, validates (S. 494) contracts of foreign corporations not conforming to certain statutory regulations provided fees are paid, and regu-

lates (H. 143) the sale and purchase of the stock of foreign and domestic corporations.

Virginia (H. 149) is a "blue sky" law regulating sale of corporate securities.

Kentucky (17) is an anti-trust law.

Oklahoma (initiated Const. Amend., adopted 1913, p. 119) permits railroad and transportation companies to sell to or acquire from other like companies their property and franchises.

Maryland (374) prohibits corporations setting up the defense of usury.

BB. MARRIAGE AND DIVORCE.

Maryland (577) makes marriages in other states in violation of the Maryland law void. New York (605) provides for the annulment of marriages where one or both of the parties had not attained the age under which consent of parent or guardian is required by the laws of the state where the marriage was contracted.

New York (482) makes it a misdemeanor for a person having a husband or wife living to take out a license to marry another.

New Jersey (63) requires petitions for annulment of marriages to be accompanied by petitioner's affidavit that there is no collusion in the application. Thereafter the procedure is to be the same as that in divorce, the purpose of the act being "to make uniform the practice and procedure in all cases of annulment of marriages," and (57) authorizes the defendant in divorce suit to file counter-suit against the plaintiff. Virginia (61) adds to the grounds of absolute divorce sentence to a state penitentiary where cohabitation has not been resumed. Pardon granted not to restore conjugal rights.

New York (196) extends to wrong done under pretense or fraudulent representation of marriage the penalty for wrong under promise of marriage.

CC. PROPERTY AND DECEDENTS' ESTATES.

In one of the most important statutes of recent years affecting the law of real property Mass. (108) provides that a contingent remainder shall take effect, "notwithstanding any determination of the particular estate, in the same manner in which it would

have taken effect if it had been an executory device or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities." The act removes the technical rule of feudal law, that a remainder fails if it does not vest on or before the termination of the particular estate because there is no seisin to support it, and subjects all remainders to the rule against perpetuities. While it is true that the statute merely enacts the Massachusetts rule against perpetuities, the rule of remoteness of vesting, and declares that this rule applies to every future interest in property, nevertheless, it is of vital interest because it is a legislative recognition that the rule is one of remoteness. Professor Gray contended that the only test of a perpetuity is that of remoteness of vesting, and it has remained for the legislature of his native state to give the first statutory sanction to his theory.

Maryland (325) makes the descent of real property the same as personal property in certain cases.

Chattel mortgages in New York (348) need not be filed where there is a mortgage, pledge or lien on stocks or bonds which by the written instrument creating the same are to be delivered to the lender on the day the loan is made. Such mortgage, pledge or lien is valid against creditors if delivered to the mortgagee on the day the loan is made. If not so delivered the instrument or a copy must be filed. Purchasers, pledgees or mortgagees in good faith of such bonds or stocks take good title at any time if there is delivery, unless the instrument or a copy is filed. Another amendment to the property law of New York (313) provides that all rents reserved by lease, annuities and other payments due at fixed periods shall be apportioned on death or other transfer of the interest of any person interested therein according to the time which has elapsed to and including the day of such death or transfer. The person entitled to the portion of such payment approved prior to transfer shall have the same right to recover the part apportioned to him by this act as he would have had if entitled to the whole; but the person liable to pay rents reserved shall not be referred to for such apportioned parts, but the entire rent shall be collected by the person

who, but for this law, would have been entitled thereto. The person entitled to the apportioned part shall recover from the person who so collects such rents. The law does not apply where it is expressly stipulated that no apportionment is to be made, nor to sums payable in policies of insurance or under annuity contracts issued by life insurance companies. The law is similar to the present rule respecting the division of interest. A third amendment to the New York property law (364) provides that where undisposed of profits, pending suspension of the power of alienation or the ownership of real estate in consequence of a valid limitation of an expectant estate, are legally paid to the next individual estate, the birth of a child to any person receiving any part of the profits shall not stop payment to him.

New Jersey (157) permits a married woman over 21 to acknowledge conveyances as a *femme sole* in so far as she need not be examined apart from her husband, nor need she declare that she signed and delivered as a voluntary act without compulsion of her husband. In Virginia (59), where allotment is made in partition suits, the sale bars the husband's right of curtesy as well as the wife's dower.

A Virginia amendment (292) reduced from seven to two years the time within which a devisee may claim from the innocent purchaser of an heir at law.

Virginia (62) adopts the uniform land registration or Torrens system law, and provides (335) that it does not apply to certain cities and counties until approved on referendum by the voters thereof. South Carolina (H. 131 and 170) provides for quieting titles to real estate to determine adverse claims and for title registration. New York (547) makes the Torrens Act more attractive to holders of titles by repealing the privilege of withdrawal from registration, providing for official examiners appointed by the registrar, subject to the court's approval, and by making payments to the assurance fund compulsory, the state guaranteeing the title certificates. The registrar may appoint official examiners.

Mississippi (S. 604) regulates the filing of assignments. New Jersey (221) requires written instruments recorded with the county clerk or register of deeds to be in English. Virginia (269) repealed the act making the recording of contracts, deeds,

etc., within 10 days after acknowledgment as effective against creditors as if recorded on the day of acknowledgment.

DD. FRAUD AND MISREPRESENTATION.

Congress (83) prohibits false or misleading advertisements or statement to sell goods, or to induce any person or corporation to purchase, discount or in any way invest in or accept as collateral security any securities or property. Massachusetts (149) forbids any untrue, deceptive or misleading advertisement intentionally placed before the public in order to sell any property. Maryland (655) makes it a misdemeanor to obtain a credit or rating by false pretenses, or (370) to be instrumental in furnishing a third person such rating, or to make a false statement to obtain property or credit, or (371) for vendors of goods in bulk to make a false statement. Virginia (42) and Kentucky (97) are broad acts punishing untrue, deceptive, or misleading advertisements of anything offered to the public with intent to sell or dispose of it.

Virginia (13) provides that persons who, with intent to injure or defraud, enter into written contracts for personal services in the cultivation of the soil and thereby obtain money or other thing of value and fraudulently refuse to perform such service or refund the money are guilty of larceny. In view of the decision in *Bailey vs. Alabama*, 219 U. S. 219, declaring the peonage law of Alabama unconstitutional, the constitutionality of this act would seem, at least, doubtful.

Virginia (280) provides that persons who, with intent to defraud, obtain from licensed merchants goods for examination and approval and refuse to return the same in unused condition, or to pay therefor, are guilty of larceny. This act, however, does not apply unless a card or tag is attached to the goods containing the clause "delivered for selection or approval," and unless the request for return be made within five days after delivery.

New York (267) makes it a misdemeanor, punishable by fine or imprisonment, or both, to attempt to operate slot machines or slot telephones without first depositing the required United States coin, or to use any slug or other device instead of such coin. The penal law of New York is further amended (366) so that the crime of receiving certain goods stolen from railroad and like

companies is divided into two degrees; the first, where the value exceeds \$50, and the second, where it is less.

EE. SALES AND MERCANTILE LICENSES.

Maryland (355) provides that conditional sales in Baltimore are void unless recorded. Massachusetts (289) provides for a fine not exceeding \$100 to be assessed against others than licensed peddlers and newspaper dealers who solicit business on public sidewalks in front of any retail store other than their own, or one in which they are employed, to induce any person to purchase at retail merchandise similar in kind to any kept or displayed for sale in such store.

Maryland (632) enacts a new license law for selling goods and chattels. Massachusetts (242) amends the law relating to the licensing of peddlers so that "wholesalers or jobbers having a permanent place of business in the state and selling to dealers only and persons selling at wholesale by sample-lists, catalogues or otherwise" are excepted from its provisions, and bartering is included with selling.

New York (385), amending the agricultural law, provides for the distribution among consignor creditors of amounts recovered by the commissioner on bonds of commission merchants, such distribution to be *pro rata* if the funds are insufficient to pay in full. Virginia (77) requires commission merchants to secure a license and to keep a record of goods received and sold. Provision is made for a consignor to obtain a settlement of his claim after 30 days by filing a complaint with the commissioner of agriculture, who shall hold a hearing and may revoke the license and bring action on the bond to recover the moneys for him.

REPORT

OF THE

COMMITTEE ON PROFESSIONAL ETHICS.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The committee announces in sorrow the death of Ezra R. Thayer, the eminent and highly esteemed Dean of the law school of Harvard University, who did much to advance the interest in legal ethics, and who was the Chairman of the committee at the time of its last annual report to the Association.

This committee is required by the Constitution to "communicate to the Association such information as it may collect respecting the activity of state and local Bar associations in respect to the ethics of the legal profession, and it may from time to time make recommendations on the subject to the Association."

There appear to be approximately 675 state and local Bar associations in the United States and its dependencies. During the current year a systematic effort has been made by the Chairman of this committee to secure definite and accurate information from these associations as a basis for this report.

To that end a circular letter soliciting specific information was addressed to the Vice-President of the Association in each state and to the Secretary of each state and local association, so far as known.

The officers of these associations are on the whole changed with such frequency, by reason of annual elections or otherwise, that it seems practically impossible to procure or keep an accurate list of their names or addresses, and it is probably for this reason that, although the letter was sent to the last known Secretaries of 676 associations and to the Vice-President of the American Bar Association in each state and territory (53 in all) only 222 replies were elicited, though only seven of the letters were returned from the post office as undelivered.

To anyone keenly interested in the subject of legal ethics the answers received were disappointing. On the whole they showed

very little active interest in the subject, save in a very few associations.

The value of legal ethics lies not so much in conventional etiquette, whatever the practical advantages in that respect may be, but in the public necessity which should and does demand that the Bar be composed of men who do not abuse their office and privileges to the great detriment of the due administration of justice.

During the year the attention of this committee has been directed to the complaint of the officers of the National Credit Men's Association, an association of members presumably not lawyers but largely representative of important commercial interests, that in many instances commercial collections intrusted to members of the Bar are not handled with that integrity or diligence which is their rightful expectation. At the annual meeting of the officers of the National Credit Men's Association, held on September 22, 1915, the following resolution was adopted:

"Recognizing the difficulties in prosecuting dishonest attorneys, and that the need is growing of abilities to do this just as effectively as dishonest merchants may be prosecuted, the conclusion was reached unanimously that the American Bar Association and local Bar associations should be appealed to for co-operation in this important work, and of a nature more efficient than is the co-operation obtainable usually from such associations at the present time; and it was furthermore concluded that the abilities to prosecute dishonest attorneys should be fostered by such reasonable statutes as might be necessary to supplement the co-operation obtainable from the American and local Bar Associations."

A copy of this resolution having been transmitted to the Chairman of this committee, it was enclosed in our circular letter to the state and local Bar associations, with a statement that the American Bar Association had taken no action thereon. Although the said resolution invites the co-operation of this Association, it appears to this committee that no further action is needed at the present time beyond a statement from the proper officers of this Association that the attention of the local association has been thus directed to the complaints and the resolution; for it is, we think, the function of the local associations to promote the proper performance of professional duty.

The Committee on Professional Ethics of the New York County Lawyers' Association continues to render efficient service by answering specific questions submitted to it by inquirers respecting the propriety of the particular acts specified in the questions. These answers are very widely published and circulated; they have stimulated a broad interest in the practical application of legal ethics; they frequently refer to and illustrate canons adopted by the American Bar Association; the problems are often such that the appropriate answer is not obvious. Though the work of the committee is merely advisory, and is wholly without any official authority, its answers have already in many instances been utilized in law schools for discussion and instruction, as illustrations from actual practice of the manner in which ethical questions arise. State Bar examiners have also utilized them in their examinations. Indeed, they are a valuable supplement to the canons of this Association, inasmuch as they show the importance of such canons, and apply their principles to specific conduct. They have been collated and published (up to the annual meeting of May, 1915) by the West Publishing Company, for gratuitous circulation in connection with the canons of this Association. They have also been published (up to December, 1915) in Martindale's Legal Directory. It is hoped that other publishers may follow these examples. The similar practice of the General Council of the Bar in England, in answering questions respecting professional etiquette, was the forerunner of this activity of the committee of the New York County Lawyers' Association, and the answers of the Council form a distinct department in the "Annual Practice" (a publication for the legal profession of England).

The substantial advantage of such an advisory committee to whom lawyers may resort with their ethical problems is not confined to the inquirers themselves, but extends much further, for it is serving to build up a body of practical interpretation of legal ethics, applicable to those cases which are not of such serious nature as to call for judicial discipline, and which therefore do not get into digests and reports as judicial precedents. Thus, the answers may be classed as educational and preventive remedies tending to the wider spread of proper standards of professional conduct.

Similar committees have been formed (we are informed) by the Bar Associations of St. Louis, and Allegheny County, Pennsylvania (Pittsburgh), and of the State of Mississippi.

We are of the opinion that they would be of great benefit to the public and the profession in all large cities at least. We are not advised that the answers or advice of any of the committees except that of the New York County Association are so collected or published.

But at the last annual meeting of the St. Louis (Mo.) Bar Association, six questions submitted by inquirers to its Committee on Professional Ethics, and the Committee's answers thereto, were reported.

The following is a table showing the number of the state and local Bar associations in the United States, so far as we are advised:

	State	Local
Alabama	1	3
Arizona	1	1
Arkansas	1	3
California	1	18
Colorado	1	9
Connecticut	1	5
Delaware	1	3
District of Columbia.....		2
Florida	1	6
Georgia	1	21
Hawaii	1	
Idaho	1	1
Illinois	1	69
Indiana	1	26
Iowa	1	26
Kansas	1	3
Kentucky	1	3
Louisiana	1	
Maine	1	16
Maryland	1	11
Massachusetts	1	23
Michigan	1	36
Minnesota	1	9
Mississippi	1	3
Missouri	1	6
Montana	1	7
Nebraska	1	12
Nevada	1	

	State	Local
New Hampshire	1	4
New Jersey	1	15
New Mexico	1	
New York	1	59
North Carolina	1	
North Dakota	1	13
Ohio	1	31
Oklahoma	1	
Oregon	1	6
Pennsylvania	1	68
Porto Rico	1	1
Rhode Island	1	1
South Carolina	1	
South Dakota	1	3
Tennessee	1	6
Texas	1	2
Utah	1	
Vermont	1	
Virginia	1	7
Washington	1	28
West Virginia	1	21
Wisconsin	1	36
Wyoming	1	2
China	1	
Total	51	625
Grand Total, 676 Associations.		

The association above attributed to China is the "Far Eastern American Bar Association," whose officers reside at Shanghai, China. The above list includes associations of judicial officers in New York and Illinois, associations of patent lawyers in Chicago and the District of Columbia, Lawyers' clubs and Bar library associations.

The possibilities of these associations in promoting high standards of professional ethics are great and if utilized would unquestionably be of large public benefit. Our correspondence indicates that the associations in which any such activity is manifested are relatively few.

An illustration of what these possibilities are is afforded especially by the work of the Committee on Professional Ethics of the New York County Lawyers' Association, already adverted to, and of the committees on Discipline and on the Unlawful Practice of the Law of the same association, as well as by the

distinguished activity of the Committee on Grievances of the Association of the Bar of the City of New York. Each of these committees is perennially engaged in the most active work of varying character, but together presenting a great wholly voluntary effort—educational, preventive, correctional and punitive—by members of the Bar in the interest of the general public, the profession and clients, all tending to elevate ethical standards, to instruct those who are willing to be instructed, to purge the Bar of unworthy practitioners who are a menace to the public good, and to suppress those who falsely pretend to be lawyers and thus unlawfully practise law, frequently imposing upon the innocent and the ignorant.

The statistics of the two grievance or discipline committees mentioned, which investigate and prosecute complaints against lawyers, for the last five years are as follows:

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK.

COMPLAINTS.

Against Lawyers.

Against
Administration
of Justice.

	Investigated.	Prosecuted.	
1911	838	15	
1912	907	16	29
1913	819	18	8
1914	821	23	16
1915	746	37	14
Total ..	4131	109	67

NEW YORK COUNTY LAWYERS' ASSOCIATION.

COMPLAINTS.

Against Lawyers.

Against
Administration
of Justice.

	Investigated.	Prosecuted.	
1911	59	5	74 (practising without license).
1912	74	5	Data not given.
1913	58	11	"
1914	66	5	"
1915	90	6	"
Total	347	32	
Grand total of the two asso- ciations	4478	141	(The year of the New York County Association ends with April—the statistics are to April, 1915.)

The Bar of the City of New York is the most numerous in the United States, and doubtless the occasion for such work is greater there than elsewhere; the above statistics do not cover, however, all of the counties in the greater city (five in number); the activities of the two associations are confined to New York County alone. These facts serve to illustrate what can actually be accomplished by the voluntary effort of the lawyers in a community at their own expense for the public benefit, by willing workers efficiently organized for the work.

The reports solicited and received by this committee from the state and local Bar associations show no such active organization and no such efficient, systematic effort elsewhere. These reports do, however, in some instances, show that, according to the opinion of those making them, the local activities correspond to the high character of the local Bar or the actual needs of the community.

It is gratifying to have received 222 replies to inquiries to which replies are wholly voluntary, but with only seven letters of inquiry returned from the post office as undelivered, it is nevertheless disappointing to have no information as a result of 507 of the inquiries. It is to be hoped that in future years information may be received from a greater number of associations.

The following data summarized from the replies received are collated for the information of the members of this Association; they contain many suggestions worthy of imitation elsewhere, to the end that the movement for higher standards of professional ethics so materially aided by this Association may be efficiently forwarded to the great advantage of the profession and the public.

ALABAMA.*

Under a provision of the State Bar Association each court room in each county has hanging, so that it can be read from the floor, near the judge's bench a framed copy of the canons of legal ethics of the American Bar Association. In the state association the prosecution of dishonest attorneys is placed in the hands of the Central Council, and it is stated that the association has succeeded in disbarring several "shysters," which has had a "very healthy effect in this state."

Of the Calhoun County Association it is said that it is insisting upon the observance of these canons by its members; it is stated that the suspension of a lawyer from practice for one year for maintaining questionable relations with a jury has had a salutary effect.

The Mobile Association is said to have been unusually active in its efforts to eliminate all violations of legal ethics; two attorneys have been prosecuted for violating state laws relating to the legal profession, resulting in suspensions for one and two years respectively; and a standing committee on ethics and reform diligently investigates all complaints of any infringements of the law by attorneys.

ARKANSAS.

In the Little Rock Bar Association there is a grievance committee which investigates complaints against members of the Bar; in the last five or six years this association has secured the disbarment of three or four attorneys; the association at its organization adopted the canons of ethics of the American Bar Association.

CALIFORNIA.

The Oakland Bar Association has, through a committee, considered and investigated complaints resulting in one disbarment, several reprimands, and several determinations that the alleged misconduct did not warrant further proceedings; the activity of the association is said to be reflected in the present high character of the Bar.

The activity of the Sacramento Bar Association upon this subject has been manifested by a meeting in which legal ethics was one of the topics upon which it was addressed; it is said that another such meeting is in contemplation.

The Bar Association of San Diego has taken an active interest in matters involving legal ethics; it has secured the suspension of an attorney for two years for a published attack upon a judicial candidate for reelection, and is now prosecuting a proceeding against an attorney for seeking to obtain a fraudulent deed; it carefully investigates charges against attorneys, and where the facts warrant it, files a disbarment proceeding.

But it is said that there is a notable aversion on the part of most people to the filing of any charges against an attorney, and that the members of the association do not feel that they should act as detectives or prosecutors even though they have knowledge that offences are being committed.

The Bar Association of San Francisco has a grievance committee which has investigated complaints against local attorneys, resulting in disbarment proceedings, suspensions, expulsions, rebukes or reprimands for misconduct.

COLORADO.

The Colorado Bar Association adopted a Code of Ethics on July 6, 1898 (10 years before the American Bar Association); it has a grievance committee which acts upon all complaints against attorneys, filed with its Secretary, and through its efforts approximately 20 lawyers have been disbarred since 1898, most of them in the earlier years; local associations report serious charges to this association, which investigates them further, and through its permanent attorney, in conjunction with the attorney-general, causes disbarment proceedings to be instituted; lawyers practising without a license are proceeded against for contempt; it is customary for the Supreme Court, in case of direct complaint, to refer it for investigation and recommendation to this association.

The Powers County Bar Association has, since its organization, maintained a schedule of minimum fees, lived up to by its members.

The San Luis Valley Bar Association has adopted a code of ethics containing 19 canons designed to promote the purity and efficiency of judicial administration and a schedule of minimum fees.

CONNECTICUT.

The State Bar Association of Connecticut adopted a code of professional ethics on February 7, 1910, based upon the canons of the American Bar Association, though in a form deemed especially applicable to the conditions in the state. The State Bar Association is a voluntary association and has no jurisdiction over the discipline of members of the Bar.

Each county has a local Bar association ; at their meetings the moral qualifications of applicants for the Bar are considered and passed upon ; grievance committees are appointed in each county by the judges of the Superior Court, and these committees make charges against attorneys for unprofessional conduct.

The activities of the Bridgeport Bar Association in legal ethics consist principally of hearings before the Grievance Committee. The meager assistance from the public prosecutor and the courts is a subject of comment.

DISTRICT OF COLUMBIA.

A grievance committee appointed by the court has control of the conduct of attorneys as members of the Bar ; the grievance committee of the Bar Association of the District of Columbia regulates the professional conduct of members of the association.

FLORIDA.

In the Florida State Bar Association a committee on grievances is authorized to consider any complaints made against members of the association, but not against others ; complaints against such members, if deemed by the committee worthy of prosecution, are heard before the state attorney for the circuit in which the offender resides. But complaints against attorneys can be most expeditiously handled by laying them directly before such state attorney. One complaint has been laid before the Hillsborough County Bar Association, but has not been disposed of because of the pendency of litigation respecting its subject matter.

ILLINOIS.

The Illinois State Bar Association adopted the canons of the American Bar Association on June 24, 1910 ; the association has adopted the general plan for discipline of the members which is in force in Ontario, Canada (Annual Report Illinois State Bar Association, 1915, pp. 7 and 8). The association appoints a grievance committee of five members for each of the seven Supreme Court districts, and makes the chairman of each of these districts a member of the general committee on grievances.

It is said that the arrangement works well. In the smaller cities it removes the prosecuting committee from local influence; the finding of a district committee is referred to the general committee. Complaints against Chicago lawyers are turned over to the Chicago Bar Association for prosecution; the latter association employs an attorney continuously to handle such matters.

The Henry County Bar Association has endeavored to stop the practice of nonlicensed persons, and especially in the probate courts.

The Peoria Bar Association has a grievance committee to which are referred all complaints against members of the local Bar; the committee takes evidence, and makes its recommendation; if the evidence warrants prosecution, the matter is placed in the hands of the proper official, who acts with the assistance of the committee. Comment is made upon the difficulty of securing committee members who will push complaints vigorously, the tendency apparently being to avoid trouble as far as possible.

The Rockford Bar Association has had several lectures upon legal ethics, but no occasion has arisen to take action respecting any complaint.

The Rock Island County Bar Association has an active committee on grievances "that has done much to weed out shyster-ing from the active members of the Bar."

The Sangamon County Bar Association is governed by the canons of the American Bar Association and its members generally adhere to these.

The Tazewell County Bar Association numbers in its membership all practising lawyers in the county; it has a grievance committee which makes annual report of dereliction of members; any unprofessional conduct may be reported to this committee, which in turn reports to the association for its action.

The Warren County Bar Association includes every member of the local Bar and keeps the matter of ethics prominently before the association. In the last 10 years the association has dealt with only one complaint, but the offender upon being called before a committee of the association promptly sought another location.

INDIANA.

From Indiana comment is made upon the deleterious effect of the Constitutional provision:

"Every person of good moral character being a voter shall be entitled to admission to practice law in all courts of justice" as facilitating the admission to practice of persons "who have no conception whatever of legal ethics."

The Indiana State Bar Association, in 1908, adopted the canons of the American Bar Association, after striking from canon 11, relating to the commingling of the client's funds with the lawyer's personal funds, the phrase

"except with client's knowledge and consent."

The Indianapolis Bar Association has adopted a code of ethics based upon the statutes of the state and the canons of the American Bar Association.

IOWA.

The Iowa State Bar Association has a standing committee on professional ethics.

Through the Black Hawk County Bar Association it is reported that in one case the judges of the District Court appointed a committee to investigate the conduct of a lawyer, but no recommendation was made, or violation of law found, yet the lawyer went to another state.

A communication from an officer of the Scott County Bar Association contains the following observation, which seems entitled to a permanent place in this report, as worthy of consideration by all associations:

"The association could, and undoubtedly should be more active regarding the more trivial failures to comply with the ethics of the profession than it is at the present time."

KANSAS.

The Kansas State Bar Association has adopted the canons of the American Bar Association, and has a Committee on Professional Ethics.

KENTUCKY.

The Kentucky State Bar Association has adopted the canons of the American Bar Association.

MAINE.

The Secretary of the Maine State Bar Association reports that upon the receipt of complaints of the conduct of some member of the Bar, which rarely happens, he has referred the complaint to the officers of the local association.

The Penobscot County Bar Association has adopted the canons of the American Bar Association and has appointed a grievance committee.

MARYLAND.

The Bar Association of Baltimore City, through its grievance committee, investigates all complaints of misconduct on the part of attorneys, it affords the attorney an opportunity to be heard, and if the case demands it, reprimands or reports to the association its recommendation of proceedings for disbarment. This association acts as *amicus curiae* where the court prefers charges of its own volition.

MASSACHUSETTS.

The Boston Bar Association and the Massachusetts State Bar Association have been in negotiation for conformity in respect to the code of ethics adopted by the former association and the canons of the American Bar Association approved by the state association; negotiations have been successfully concluded whereby a single code has now been adopted by both associations. A committee of the Boston association recommended the publication of extracts from this code for the information of the public by placing certain printed extracts in every County Court House, District Court, Police Court, and Probate office, and in the law libraries, with notice that copies of the entire code could be obtained from the Secretaries of the associations; it also recommended the placing of a copy of the code in the hands of every person newly admitted to the Bar; it also recommended sending a copy to every newspaper with a letter to the editor suggesting an editorial article on the subject as a matter of public interest, and that every lawyer be urged to keep a copy of the extracts, to be furnished by the associations, conspicuously displayed in his office. Objection, however, developed among the officers of the associations and from certain of the judges, to the posting in the Court Houses.

It is to be noted in this connection that in Tennessee, the Nashville Bar Association has posted in the Court House notices to the public of the readiness of its grievance committee to investigate and prosecute complaints against lawyers for professional misconduct; and that it has resulted beneficially to the community.

A copy of the joint code of the Massachusetts Bar Association and of the Boston Bar Association was published in the first number of the Massachusetts Law Quarterly (Nov., 1915).

During the winter of 1916 a determined effort was made under the auspices of the presidents of the state and several local associations to secure the repeal of Chapter 249 of the Laws of 1915, which nullified the rules promulgated by the Supreme Judicial Court prescribing educational qualifications for lawyers; the legislation was not, however, repealed.

The Berkshire Bar Association also has a grievance committee.

The Franklin County Bar Association comprises in its membership all lawyers practicing in the county; it has a similar grievance committee.

In the Worcester County Association the Executive Committee acts as a grievance committee to entertain complaints for breaches of legal ethics.

MICHIGAN.

The Grand Rapids Bar Association has been instrumental in having the actions of several attorneys investigated in the last few years, resulting in disbarment in one case.

The Kalamazoo Bar Association has a grievance committee, which, however, does not act upon its own initiative; it is said that disbarment proceedings are practically never resorted to.

The St. Clair County Bar Association has a committee on grievances.

MINNESOTA.

The Minnesota State Bar Association at its last annual meeting devoted considerable attention to the subject of legal ethics, and the chairman of our committee was invited to deliver an address upon legal ethics with particular regard to ambulance

chasing and the disciplining of attorneys; the annual address of its President was largely devoted to the same subject. The association has a standing committee upon legal ethics. A few years ago the committee commenced and is still continuing aggressive work to discourage "ambulance chasing"; its efforts to secure corrective legislation have not thus far succeeded. It is said that this particular form of professional activity has reached a higher degree of commercial perfection in Minnesota than anywhere else in the United States, many firms having runners and cappers with offices in other states, one firm maintaining offices or representatives for the solicitation of accident business in at least 36 places outside of the state, unusual rewards and inducements being offered for the prosecution of litigation in Minnesota over accidents occurring elsewhere; and it is reported of one firm that it even maintains a hospital and medical staff of its own as an inducement for employment. The importation of litigation is said to add greatly to the burden of taxpayers though adding also largely to the income of the lawyers who solicit it.

At its last annual meeting the association appointed a special committee to formulate proposed legislation; it has recently held a joint meeting with a similar committee of the Wisconsin State Bar Association, at which sub-committees were appointed to draft bills. The policy of leaving disciplinary work to the local associations has now been definitely abandoned, the conclusion having been reached that the state association can and will do more efficient work. The new policy of the association in this regard has been given much publicity, both among lawyers and newspapers, and many complaints have been received; some prosecutions have already been recommended. The purpose of the association through its committee on ethics to investigate all complaints against lawyers, in an endeavor to protect the courts and the public against unprofessional conduct, was communicated by circular letter (dated November 18, 1915) to every lawyer in the state. At the same time notice was given of the purpose of the Committee on Jurisprudence and Law Reform to give respectful consideration to all complaints or suggestions from responsible sources looking to the removal of unnecessary defects, inconsistencies and complications of the law.

The Minneapolis Bar Association has a discipline committee, but it is the duty of the State Board of Examiners to institute and conduct disbarment proceedings; the committees of the association have coöperated with this board, investigating local cases, reporting the facts to the committee of the state association or to the board.

The Executive Committee of the Ramsey County Bar Association with the officers constitute a Committee on Professional Ethics, which takes under consideration complaints against members of the association, giving the person charged an opportunity to be heard; the committee's reports upon charges deemed well founded are forwarded to the State Board of Law Examiners.

MISSOURI.

The Kansas City Bar Association has manifested considerable activity in respect to legal ethics, its grievance committee is active, and three disbarment proceedings are now pending.

In 1915 the association appointed a Committee on Unlawful Practice of the Law in Kansas City and Jackson County, which committee has taken proceedings to suppress the practice of law by laymen and by corporations. As the result of its activities it secured the enactment by the legislature of Missouri of a bill defining the practice of the law and law business and two other acts, one specifically directed to probate practice and one as a rider to the Banking Law, especially prohibiting the drawing of wills by trust companies. As the result of conferences with representatives of some of the financial institutions of the city, the committee secured changes in the printed circulars and pamphlets issued by trust companies with respect to the writing of wills. In the revised pamphlets (the committee reports) these institutions do not now solicit the opportunity to prepare wills for their customers, but advise that such documents demand special wording and call for care and preparation in each individual instance, and that the writing of a will "is work, the character of which justifies the employment of a lawyer of ability." In one announcement the expression used is: "The use of a blank form in the making of wills is not practicable. Each individual will demands special wording and calls for the utmost

care in its preparation. . . . No layman should attempt to write his own will, even though a simple one, nor attempt to copy it in whole or in part from another will."

In the case of complaints against three members, now being prosecuted for felonies, the St. Joseph Bar Association has decided to take no action until after the trials unless unduly delayed.

The St. Louis Bar Association commenced proceedings against a member for disbarment, but as he was charged with an indictable offense, a majority of the Supreme Court decided that the proceedings had to be abandoned or stayed until action by the public authorities. *State ex rel. Sellack vs. Reynolds*, 252 Mo. 369. (It is noteworthy that the Appellate Division of the Supreme Court in New York has reached a contrary conclusion. *Matter of Stanton*, 161 App. Div. 555.)

The St. Louis Bar Association instituted a Committee on Professional Ethics in November, 1914. Its functions are similar to those of the committee of the same name of the New York County Lawyers' Association. It has received and answered five questions from counsel, and the chairman gave one additional tentative answer in an emergency when the committee could not be called together.

It may be well to note in this connection that in three years the committee of the New York County Lawyers' Association has answered 109 questions; and in the last two annual reports have appeared 110 additional questions answered by the chairman as his individual opinion where the inquirer did not require or could not wait for an answer from the committee.

The Springfield Bar Association has a grievance committee. Following a recent investigation of certain of the members of the Bar, it is said the Bar at present has "a very healthy sentiment along the line of legal ethics."

MONTANA.

The Silver Bow County Bar Association has adopted canons of professional ethics, conformable but not identical with those of the American Bar Association. The difficulty experienced by this association is with persons practising law, who are not lawyers but hold themselves out to the public as such.

(In this connection it is noteworthy that the New York County Lawyers' Association has a standing committee on the Unlawful Practice of the Law, which is very actively engaged in handling this problem in New York County, N. Y.)

NEBRASKA.

The Nebraska State Bar Association has adopted in the main the canons of the American Bar Association. The first mentioned association has a Committee on Inquiry to investigate complaints against members. On account of notoriously prevalent perjury in the courts of the state and the belief that it was suborned by lawyers, the association took unsuccessful steps in 1915 to secure legislation for the appointment of three State Commissioners to entertain and investigate and report upon complaints against lawyers, preliminary to active proceedings for their disbarment.

The Lancaster County Bar Association usually recommends candidates for the District Judgeships.

NEW HAMPSHIRE.

It is stated that questions of ethics were to be taken up at the annual meeting of the Bar Association of the State of New Hampshire in July, 1916.

NEW JERSEY.

The Camden County Bar Association has a committee on legal ethics.

The Lawyers' Club of Essex County has a similar committee, which, during the past year, investigated six complaints deemed worthy of serious consideration, of which four were acted on, and in one instance the papers were forwarded to the prosecutor of the county for criminal action; the majority of complaints involved questions of overcharge; the committee only investigates complaints brought directly to its attention; the more serious cases are usually presented directly to a court without prior presentation to the committee.

The Monmouth Bar Association has a similar committee.

The Bar Association of Passaic County has a committee which investigates all complaints against members.

The Bar Association of Union County has a committee on grievances to receive complaints and a committee on prosecutions to prosecute all complaints referred to it by the association or its grievance committee.

NEW YORK.

The New York State Bar Association has an active Committee on Professional Ethics, which has recently recommended the institution in the law schools of the state, of chairs or lectureships on legal ethics, in imitation of the laudable example of the lately deceased General Thomas H. Hubbard in founding a lectureship in the Albany Law School.

The New York State Bar Association adopted the canons of the American Bar Association in 1909; and under its auspices a copy is furnished to the clerk in each judicial department of the state for delivery to each person as he takes the oath of an attorney. At the last annual meeting the committee on legal ethics made an elaborate report calling especial attention to the activities of the associations in New York City. Among other things it directed attention to the recent legislation in Missouri (Laws 1915, p. 99; 1915, p. 265) defining the practice of law and the law business and prohibiting engagement in unlawful practice, or the unlawful division of legal fees.

The association of the Bar of the County of Bronx has a grievance committee.

The Brooklyn Bar Association has a standing committee on grievances which makes thorough investigation of complaints and presents charges in proper cases to the Appellate Division of the Supreme Court. This association also has a special committee to investigate the unlawful practice of the law by individuals and corporations, which, if the facts warrant, presents the case to the District Attorney for prosecution.

The Broome County Bar Association considered two complaints during the year.

The Lawyers' Club of Buffalo considers that its moral influence through social contact of the members is a considerable influence in raising the standard of professional conduct.

The Bar Association of Erie County has a grievance committee, which investigates and takes such action as the case may warrant. Its work is more the redressing of wrongs than guidance in the way of right before wrongs are committed.

The activities of the New York City associations (whose jurisdiction is limited to the old city of New York, and does not extend to the present greater city, which includes five counties) have been recorded above as illustrations of intense and well-directed ethical efforts.

The Niagara County Bar Association has a committee on grievances to receive complaints against members, but in a small community no one likes to take the initiative in disciplining an attorney.

The Orange County Bar Association has a grievance committee.

The Rochester Bar Association has a committee on grievances. In 1915 a special committee reported recommendations which were adopted for enlarging and defining the powers of this committee, for the purpose of greater efficiency. The canons of the American Bar Association were adopted.

The St. Lawrence County Bar Association has investigated one complaint through a special committee.

NORTH DAKOTA.

In North Dakota, section 808 of the Code (1913), provides for the Supreme Court preferring charges of conduct warranting disbarment or suspension from practice to the Bar Association of North Dakota with directions to investigate, and with power in its representatives to administer oaths, take testimony and issue subpoenas. An appropriation not exceeding \$1000 per annum out of the general fund of the state is made for this purpose.

The Cass County Bar Association acts both in respect to members and nonmembers in case of specific charges; it also has refused to admit to membership practitioners whose general attitude seems opposed to high professional standards.

OHIO.

The Akron County Bar Association has an investigation and grievance committee. It is remarked, however, that in a city

of the size of Akron the acquaintance among members of the Bar is so close that considerable difficulty is experienced in actually getting any report from a committee, if it must be unfavorable, or in actually visiting upon any wrongdoer either the discipline of the association or the punishment of the courts; but nevertheless the publicity incident to the investigation is salutary; on the whole, however, occasions for actual discipline are rare.

In the Cincinnati Bar Association the committee on grievances in the past few years has adjusted a number of cases which have been brought to their attention without making them matters of publicity.

The Findlay Bar Association has recently had under investigation the conduct of one of its members.

The Franklin County Bar Association has a grievance committee which considers complaints against lawyers in the community; though the complaints have been numerous, disbarment proceedings are rare, averaging about one a year.

The Montgomery County Bar Association has adopted the canons of the American Bar Association.

The Paulding County Bar Association has caused complaints to be filed in cases coming to its attention which justify charges of dishonesty among local practitioners; it has caused the disbarment of two and another case is pending.

The Springfield Bar and Library Association has a grievance committee with which complaints in reference to the misconduct of the Bar are registered for investigation and the preferment of the necessary charges.

The Stark County Bar Association has a committee on grievances which investigates reported misconduct of attorneys.

The Toledo Bar Association has a committee on grievances.

OKLAHOMA.

In Oklahoma the matter of disbarment is entirely in the hands of the Supreme Court and the few proceedings have been instituted by individuals. It is stated that the State Bar Association has made some sporadic efforts to raise standards, but that the field is practically untrodden.

OREGON.

The Oregon Bar Association has a grievance committee, which hears all complaints from whatever source, and through a prosecutor appointed and paid by the association, conducts disbarment proceedings in such cases as seem proper. For three years past the association has paid particular attention to improving the personnel of the profession by raising the standard for admission to the Bar and by aggressive steps for disbarment; it is said that these proceedings in the last three years have numbered more than in the previous 17 of the association's existence. It is also said that this is one of the most important present features of the association's activities.

The Multnomah County Bar Association has an active grievance committee which investigates charges against practitioners in the county; during the last year through its efforts four attorneys have been disbarred and hearings upon about 50 additional complaints have taken place. A majority of the charges have been without foundation, except a misunderstanding of the duties of attorneys. It is the policy of the committee to bring about a better understanding between clients and attorneys by giving complainants a chance to be heard and trying to point out to them where they are unjust to their attorneys, or if the attorney is wrong, to require him to do the right thing. The method has been found satisfactory and the committee has accomplished a great deal.

PENNSYLVANIA.

The Bucks County Bar Association has a board of censors, which has very little work, the Bar being small.

The Clarion Bar Association has a similar board of censors.

In the Erie County Bar Association, though a grievance committee is provided for, it has become obsolete. There is perfect harmony between Bench and Bar, and the courtesy and fraternal feeling in the profession is proverbial; a violation of the rules of professional conduct is said to be unknown.

The Law Association of Philadelphia has a board of censors.

PORTO RICO.

The Supreme Court has adopted the oath for admission recommended by the American Bar Association.

SOUTH CAROLINA.

The South Carolina Bar Association has a committee on grievances. This committee has been very active in clearing up matters in which the integrity or honesty of South Carolina attorneys is questioned. At its last meeting the association appointed a committee on questions of legal ethics to report at its next meeting.

SOUTH DAKOTA.

The South Dakota Bar Association has adopted the canons of the American Bar Association; it has a standing committee on grievances which has investigated complaints. As a rule such complaints have been adjusted, investigation generally showing that the attorney was not at fault, though one or two cases have been referred to the attorney-general.

TENNESSEE.

The Bar Association of Tennessee has a committee on grievances, and specific provisions in its by-laws for the prosecution of proceedings against members of the Bar guilty of misconduct. Two years ago a special committee was appointed to investigate and prosecute charges of ambulance chasing and the improper solicitation of business. A number of investigations have been made and severe reprimands administered, resulting in the cessation of the unprofessional conduct in such cases; no disbarment proceedings have been commenced.

The Memphis Bar Association appointed a committee to investigate charges of unprofessional conduct of a judge and the attorney-general of a county, and both were put on trial by the legislature in extra session under special call of the Governor.

The Nashville Bar Association has an active grievance committee and also a committee on the unlawful practice of the law. The grievance committee has widely published and publicly posted in the corridors of the court houses and the clerks' offices cards containing notices that it is prepared to investigate and prosecute complaints of misconduct on the part of lawyers. It has found that the mere fact that there is such a committee has acted as a powerful deterrent of professional wrongdoing. We

understand that this committee is also prepared to act in an advisory capacity in respect to questions of legal ethics.

VIRGINIA.

The Virginia State Bar Association has had a code of ethics from its organization, but several years ago, for the sake of uniformity, adopted the canons of the American Bar Association. It has a committee on presentments, which has conducted several investigations in the last few years, but in each instance there was not sufficient ground to justify a hearing by the grievance committee.

The Bar Association of the City of Richmond has a grievance committee. By its charter the association is authorized, in its corporate capacity, to take the necessary steps to secure the disbarment of offending members of the Bar.

WASHINGTON.

The Washington State Bar Association has a committee on grievances and has assisted in the prosecution of several delinquent members of the Bar, and has been instrumental in getting legislation to compel a more wholesome respect for professional ethics. For many years the statute law of Washington had contained provisions similar to the canons of the American Bar Association; these have now been exactly conformed.

The Chelan County Bar Association has been zealous to maintain a high standard of ethics and in one instance has procured a disbarment.

The Lewis County Bar Association has a standing committee which has made rigid investigation of various members of the Bar. Complaints have been filed, but none have been reported for disbarment. Nevertheless the ethical tone is said to have been appreciably raised.

The Spokane Bar Association has a grievance committee.

The Whatcom County Bar Association has a grievance committee; two charges have been filed before it in several years, and only one deemed to have foundation.

The Yakima County Bar Association has a grievance committee, before which several complaints have been laid, but none

deemed sufficient for trial. The reluctance of members of the Bar to attack those of their own profession is the subject of comment in the communication enclosing this information.

WEST VIRGINIA.

The West Virginia Bar Association has a committee on grievances before whom at the last annual meeting one charge was pending. The association has a code of ethics similar to that of the American Bar Association.

The Ohio County Bar Association has a standing committee on grievances, but for several years there has been no occasion for the exercise of its functions. The work of the committee in the past resulted in two disbarments.

WISCONSIN.

The Wisconsin State Bar Association has taken an active interest in ethics during the last three years. Bills have been introduced into the legislature to penalize ambulance chasing and the solicitation of business. A committee in charge of the subject is cooperating with a similar committee of the Minnesota State Bar Association (see Minnesota above). The address of the retiring President in 1915 dealt with this subject.

The Milwaukee County Bar Association has indorsed this action of the state association. It has a committee on ethics.

While the foregoing information is in no sense complete, it offers much food for reflection and observation. Especial attention is now invited to the following matters which seem to justify particular mention: the almost complete lack of responsible and rigid state supervision over the conduct of those to whom the state by law commits such an important function in the administration of justice; the almost entirely voluntary character of such work as is done by voluntary associations of lawyers in doing what is certainly, in its last analysis, an important state function; the obviously great lack of any systematic method of holding lawyers to their official duty; the confessed reluctance of lawyers to take aggressive steps against those who are responsible in large measure for the slight regard in which the profession is held (*e. g.*, see *supra*, California, Bar Association of San

Diego; Illinois, Peoria Bar Association; Washington, Yakima County Bar Association); the almost total lack of any attempt whatsoever at educational effort by the associations except through disciplinary proceedings; and the over emphasis of the punitive and corrective, rather than the preventive aspects, of united activity.

We have already emphasized, by way of illustrating the possibilities of systematically organized professional work, the combined efforts of the committees of the New York County Lawyers' Association, educating through its Committee on Professional Ethics, investigating and prosecuting offending lawyers through its Committee on Discipline, and taking the proper steps to suppress unauthorized practitioners through its Committee on Unlawful Practice of the Law.

The cooperation of committees of two state associations (Wisconsin and Minnesota) to secure state legislation to suppress the evils of ambulance chasing and systematic solicitation of professional employment, is also noteworthy. Other especially noteworthy facts, all offering suggestions for a proper, efficient system, in which the state should play its essential part in the prompt suppression of professional evils tending to the discredit of the due administration of justice are: The state appropriation for investigation of complaints in North Dakota, and in the same state the power of the investigating committees to administer oaths and issue subpoenas; the legislation of Missouri designed to suppress the unlawful practice of law; the intense activity of the Grievance Committee of the Association of the Bar of the City of New York; the uplifting influence of lawyers' social clubs, illustrated by the Lawyers' Club of Buffalo; the educational activities in legal ethics of the Albany Law School, through the means of the Hubbard foundation for a lectureship on legal ethics, and of the New York State Bar Association in circulating the American Bar Canons among all men admitted to the Bar of the state, and of the New York County Lawyers' Association and the Bar Association of the City of St. Louis through their committees in advising inquirers respecting proper professional conduct; the activity of the Nashville Bar Association in advising the general public through notices posted in the Court House of the agency through which complaints against

offending lawyers may be patiently investigated and proper disciplinary steps taken; the proposals of a committee of the Boston Bar Association (for the present delayed on account of opposition) to post in public places, including court rooms, illuminating extracts from the canons of ethics for the instruction of clients; and the activity of the Alabama State Bar Association in hanging in each court room a framed copy of the canons of the American Bar Association; the practice of the local associations in Colorado of reporting serious charges to the state association for action; the employment of permanent salaried attorneys as investigators or prosecutors by the associations in New York County and the City of Chicago, and by the state associations of Colorado and Oregon; the practice in Colorado (as well as in New York City) on the part of the courts of referring complaints to a Bar association for investigation and report; proceedings for contempt of court against those practising law without due admission to the Bar; the function of the local associations in Connecticut of passing upon the moral qualifications of applicants for admission (a function performed in New York by committees on character appointed by the court, see proceedings of Section of Legal Education, Reports of American Bar Association for 1914, p. 813; 1915, pp. 714, 767); the appointment of a grievance committee by the court in the District of Columbia; the limited power of grievance committees in some of the associations, by which their authority is limited to members of the association, whereas, it should be extended to all members of the Bar; the hesitation or disqualification of some of the committees (*e. g.*, see above under Florida, Missouri) to proceed against an attorney accused of indictable crime (though in New York this is judicially held to be no bar to a prompt proceeding for the professional discipline of the attorney, a very salutary rule; see *Matter of Stanton*, 161 Ap. Div. 555); the lectures or addresses upon legal ethics instituted by some associations or at some of their meetings (*e. g.*, see *supra* Illinois, Rockford Bar Association; Minnesota, State Bar Association); the subdivision of the state into districts by the state association for the purposes of investigation, but eliminating local influence by referring the question of further proceedings to a general representative committee (*e. g.*, *supra*, Illinois State Bar Association); the sug-

gestion (*supra*, Iowa, Scott County Bar Association) for greater attention by Bar associations to the more trivial failures to comply with the ethics of the profession; the interesting of newspaper editors in legal ethics and the display of the canons in lawyers' offices, as suggested by a committee of the Boston Bar Association (*supra*); efforts to elevate educational standards in the face of adverse legislation (*supra*, Massachusetts, Boston Bar Association); the commitment of prosecuting functions to the State Board of Examiners (*e. g.*, Minnesota, *supra*); the relegation of all disciplinary work to the State Bar Association in the interest of greater efficiency (*e. g.*, *ibid.*); the circularization of the Bar to acquaint it with the willingness and determination of the state association to act vigorously in such matters (*ibid.*); the suggestion of state commissioners to investigate charges against lawyers (*supra*, Nebraska State Bar Association). (The committee of the New York County Lawyers' Association formulated and unsuccessfully recommended to the Board of Directors of that association several years ago, a bill for the institution under state law, of a Board of Legal Discipline, Year Book, N. Y. County Lawyers' Association, 1910, pp. 115, 124); the suggestion of candidates for the judiciary by Bar associations (*e. g.*, Nebraska, Lancaster County Bar Association); the endeavor, as in the Multnomah (Oregon) County Bar Association to bring about a better understanding between clients and attorneys; the adoption by the Supreme Court of Porto Rico of the oath upon admission recommended by the American Bar Association; the investigation and administration of dissuasive reprimands in the case of ambulance chasing and the improper solicitation of business as by the Bar Association of Tennessee; the conferment upon Bar associations by their charters (*e. g.*, *supra*, Virginia, Bar Association of the City of Richmond) of the power to take the necessary steps to secure disbarment.

This committee has now no recommendations to make for any action by this Association. It believes that the collation and dissemination of such information as this report contains, now for the first time systematically undertaken, will, if made a permanent feature of the activities of this committee, ultimately redound to the more general and systematic elevation of stand-

ards of actual conduct in the profession through the greater energy of local institutions.

At the meeting of the Association in Montreal in 1913, E. Spencer Miller, Esq., of Pennsylvania, offered the following resolutions (Vol. XXXVIII Reports Am. Bar. Assn., p. 76):

"That Canon 15 of Professional Ethics of the American Bar Association be amended by adding after the words, 'to do whatever may enable him to succeed in winning his client's case' the words:

" 'The lawyer can do no more in a case he finds to be palpably unjust than to extricate himself if he has assumed it, without causing it to break down or be pre-judged.'

"And that to Canon 31 there be added these words: 'Wrong done by his client is his wrong if he knowingly participates in, or facilitates it.' "

These resolutions were referred to the Standing Committee on Professional Ethics. The committee made no report thereon in 1914, nor in 1915. It is urged by the proposer of the resolutions to embody recommendations in its present report. Members of the committee have carefully considered the proposal embodied in the resolutions. The committee has had other correspondence, not relating specifically to any resolution, but expressing the views of one or more members of the Association in respect to the advisability of changing the language of certain of the canons.

The committee, however, is of the opinion, in view of the careful labor that was expended in the preparation of these canons, and the reception of the canons by various Bar associations, all as set forth in the committee's report at the meeting in Washington, D. C., 1914 (Vol. XXXIX Reports Am. Bar Assn., p. 539), that no revision of the said canons at the present time is desirable, and it accordingly recommends that no steps be taken at the present time to consider the substance of the changes suggested by the mover of the resolutions.

In making this present recommendation the committee expresses no opinion upon the merits of the alteration of the language of the existing canons suggested, if and when, after experience in their reception and application, it shall be deemed

by the Association wise to undertake the revision of the particular canons specified in the resolutions, or others.

CHARLES A. BOSTON,
JULIUS HENRY COHEN,
O'NEILL RYAN,
THOMAS PATTERSON,
JAMES E. JENKS.

New York, June 15, 1916.

REPORT

OF THE

COMMITTEE ON PATENT, TRADEMARK AND COPYRIGHT LAW.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your Committee on Patent, Trademark and Copyright Law reports as follows:

There have been introduced during the present session of Congress many bills relating to patent law, trademark law, and copyright law, respectively, some of them disregarding the distinction between the province of each. They have ranged from minor and proper amendments to radical and emasculating curtailments and equally radical schemes for creating statutory monopolies in what has not heretofore been treated as the proper subject of either patent, trademark or copyright laws.

The majority of your committee have thought that, under present conditions, they could be of more service by observing pending legislation and seeking to bring to the attention of legislators such considerations as might aid them in determining the merit or demerit of the bills before them, and by contributing as far as possible toward informing them concerning the practical effect of those which we regard as especially mischievous, than by introducing and advocating measures of our own. We have examined pending bills relating to these subjects and submitted to the committees on patents in both Senate and House an analysis of all such pending bills, with suggestions concerning their effect and a summary statement of reasons why, in our opinion, they should be passed, amended or rejected. Bills relating to trademark and copyright law are referred to these committees, as well as those relating to patent law. Certain of these pending bills we have regarded as exceedingly obnoxious, and earnestly pressed upon both houses of Congress the consequences which, in our opinion, would follow their enactment—consequences often quite different from those they pro-

fess to seek, and probably in some instances quite different from those contemplated by their authors and advocates.

It would unduly expand this report if we were to repeat here all that we have said there, but in order to inform this Association of what is promised and what threatened by this pending legislation, to enable it to judge how far it approves or disapproves our action concerning it, and with the hope that all members of the Association will as far as able assist in defeating what is bad and retaining what is good, we submit here a resumé of what we thus brought to the attention of Congress. Many of the bills referred to are practically re-enactments of existing statutes—sometimes quite voluminous—where their only practical effect is the occasional insertion, omission or substitution of a word or phrase, and their significance can only be ascertained by comparing them with the statute which they profess to supersede.

H. R. 380, introduced Dec. 6, 1915, and S. 666, introduced Dec. 7, 1915, would amend the trademark act by inserting in the list of marks prohibited from registration in paragraph (b), Sec. 5, after "emblem"—

"Or the name of any church, religious denomination or society, or the name by which any church, religious denomination or society is commonly known or called."

We recommend its enactment.

H. R. 417, introduced Dec. 6, 1915, entitled "To protect owners of trademarks, labels, and similar property" is penal rather than merely remedial, inflicting severe penalties upon what may be an entirely innocent and unobjectionable copying, or having in possession, or using for legitimate purposes—

"any business card, trademark, label, firm name, design, picture, wrapper, paper, advertisement, or any device whatsoever, or the plates, dies, stones, forms, negatives, or designs therefor in colorable likeness, similitude, shape, design, or wording of any known existing card, trademark, firm name, label, design, picture, wrapper, paper, advertisement, or device whatsoever, except only under authority of a written and signed order duly and legally executed by the individual, firm, co-partnership, corporation, association, or body legally owning or possessing said card, trademark, label, firm name, design, picture, wrapper, paper advertisement, or device, or who has publicly used the same for a period of time not less than 12 months," etc.

The penalty for the first violation of any provision of this sweeping act is a fine of not more than \$500 nor less than \$100, and for the second not more than \$1000 nor less than \$500, or imprisonment not more than six months, or both.

Students or artists who, by way of practice, should draw or paint, or otherwise copy, the simplest article, whether picture, or business card, or advertisement, with no purpose of making any use of it which would in anywise prejudice the owner, though the thing copied might not be worth five cents and the owner had tacitly or orally acquiesced, would be subject to prosecution at the instance of a stranger, and the court would have no option except to inflict crushing penalties, which would soon so accumulate that no person of ordinary means could pay them. No compensation is made to one who has been really wronged, and the penalty is not dependent upon whether the owner made, or had, any objection to such a copy. Copying an advertisement for the purpose of using the information contained in it, the very purpose for which the advertisement was inserted, would seem to come within the penalties thus imposed. Having in possession a business card possessing "colorable likeness, similitude, shape, design, or wording" to any known existing card, would incur these penalties. Resemblance in either shape, or design, or wording is sufficient. Intention or tendency to deceive is not required. It is almost impossible to have a business card that may not in some of these respects resemble other business cards, and it would not be safe for any person to use or have a business card. Mere possession of an article of merchandise by the consumer might carry with it these penalties, if it bore some label, or trademark, or name, or emblem, resembling one used by a different dealer. There is already an adequate remedy against those who have wrongfully copied marks, labels, pictures, wrappers, or advertisements. Such an enactment as this would put innocent people in peril of blackmail and confer no benefit at all commensurate with the harm it would do. We think it unnecessary and seriously objectionable.

H. R. 420, introduced Dec. 6, 1915, would amend the copyright law of March 4, 1909, by adding to the enumeration of

classes for registration in Sec. 5, after "Prints and pictorial illustrations," the following:

"(1) Labels, trademarks, firm names, and special designs, pictures, prints, wrappers, cartons, containers, and advertisements which are specifically created for individual trades, manufactures, or businesses, engraved, printed, colored, or produced in any manner whatsoever."

The primary intent of the copyright law is to protect intellectual labor as distinguished from the protection of such marks as are used for their significance in commercial transactions, and the trademark law has given quite ample protection in respect to the latter class of marks. When it was enacted efforts were made to engraft upon it provisions more appropriate under the trademark law. We think it seriously objectionable to incorporate upon it this provision and to impose its penalties on such marks, irrespective of the extent or character of the infringement and in addition to the recoveries elsewhere afforded in compensation for such infringements. This provision, if to be made at all, would belong in the trademark law rather than the copyright, and is unnecessary in either. The amendment, perhaps unintentionally, drops out of this section what was introduced by an amendment of August 24, 1912, relative to motion pictures and motion picture photo plays.

H. R. 588, introduced Dec. 6, 1915, would amend Sec. 15 of the copyright law where it provides certain exceptions from the requirement that the printing shall be done in this country, by inserting toward the end of that section the words "*or periodicals*" between "books" and "of foreign origin." We think it a proper amendment.

H. R. 3053, introduced Dec. 7, 1915, would add to Sec. 23 of the copyright law the following:

"Upon the expiration of the copyright of a book, or the renewal thereof should the same be renewed, there shall exist no superior rights of any nature whatsoever in the publisher or former proprietor thereof to the matter which has been the subject of copyright or to the name or title thereof, but both the matter which has been the subject of copyright and its name or title shall fall into the public domain and thereafter be forever free to the unrestricted use of the public."

This amendment may be interpreted to express what is the real effect of the present law—that is, that no exclusive rights

in either name, title, or subject-matter survive the expiration of the copyright. If the last clause is intended to mean merely that the name and title shall thereafter be free to unrestricted use in any fair and honest way, it is unnecessary; if it is intended to mean that courts shall not have the same right to enjoin from *deceptive use* that they have to enjoin the deceptive use of other words open to unrestricted use for all purposes not deceptive, we think it objectionable. The latter interpretation might be given it under the rule which presumes such an enactment to change the effect of the statute which it purports to amend, and seeks for the amendment a meaning that would give it some effect rather than leave it superfluous.

H. R. 3054, introduced Dec. 7, 1915, to amend Secs. 4884 and 4899 of the Revised Statutes relating to patents is the survival of the bill known as the Oldfield Bill pressed before the Sixty-second and Sixty-third Congresses, some parts of the original having been omitted or transferred. In Sec. 4884, it changes the definition of the territory within which patents are operative now reading, "throughout the United States and the territories thereof" to read "*throughout the United States and all territories and possessions under the jurisdiction thereof.*" It limits the term of a patent to 19 years from the date of filing *in this country the application upon which the patent was granted, exclusive of the time actually consumed by the Patent Office or courts in considering the application and exclusive of the time involved in interference proceedings, providing that in no case shall the patent be in force more than 17 years.* We question whether this amendment would extend patents to any possessions not included under the former term "territories," and whether the 19-year limitation would have any advantages comparable with the confusion which it would introduce concerning the term of patents.

The proposed amendments or additions to Sec. 4899 are much more radical in their effect, especially those *depriving the patentee and his assignees of exclusive control of the invention during the term of the patent.* We are confident that these provisions would not only work great injustice, but would seriously tend to defeat the development of inventions and the commercial conditions necessary to make them practically avail-

able to the public, and would hamper and impede rather than promote the progress of the arts. The provision that *no person selling or otherwise disposing of any article of manufacture under a patent shall have any greater right to prescribe conditions limiting its subsequent disposition or use than if it were not patented*, would often prevent inventions from being brought practically into use under conditions most favorable to the public enjoyment, and make it impossible for many meritorious patentees to introduce their inventions and deprive them of all recompense. There are many inventions whose introduction can only be accomplished, or best be accomplished, by conferring exclusive right to use for certain purposes, or in certain arts, upon one set of vendees or licensees, and for other purposes, or in another art, upon another set of vendees or licensees, often fixing quite different conditions and prices according to the value of the invention in each art. If licensees cannot obtain exclusive rights in their art, they will not take up and push the invention, and the patentee may be quite unable to start it in such arts without the incentive furnished by an exclusive right. The introduction of many inventions is so far experimental and involves for the assignee or licensee so many expenses and risks before he can make it profitable, with the chance of not succeeding at all, that it is necessary to hold out the encouragement of exclusive right as an inducement to assume this risk. With some inventions it is better for the patentee and the public that this right should be exclusive in respect to certain uses in those who have advantages for controlling such uses, and exclusive in respect to other uses in those who have advantages for controlling such other uses.

If a person obtains license to use an invention for one purpose only, and thus becomes vested with the right under the franchise only to the extent of such license, there is no reason in law or equity or public policy why, when that person undertakes to violate a part of the franchise not included in his license, the owner of the patent should not have against him, in respect to such trespass, the same redress that he would have against any other person committing the same trespass. One who has recognized the patent by taking license under it, and thus been made a participator in certain advantages of the invention,

would seem to be more guilty when he invades a part of the franchise to which he held no license than if he were altogether a stranger. Under the present law a licensee is not liable to action for infringement of the patent unless he trespasses upon a right excluded from his license.

The provisions of Sec. 3 of this amendment, relating to *compulsory licenses*, would seriously impair the reward conferred upon the inventor, and obstruct the introduction of inventions into commercial use to an extent which would far more than counterbalance any theoretical advantages. It leaves out of account the practical conditions which confront an inventor after his invention is made, and the work that has to be done, generally by others than the inventor, in adapting the invention to commercial conditions, ascertaining its actual value, developing it—often at much risk and expense—and making such inventions as prove worthy, practically available for public use, and the inducements necessary to secure the services of capital and business experience in this indispensable part of bringing useful inventions to the public and eliminating the less useful. Where inventions ultimately become remunerative and immensely beneficial to the public, it often happens that for many years after the grant of the patent, notwithstanding persistent efforts to bring them into use, there is only loss and discouragement. Thousands, or hundreds of thousands, of dollars may be expended before they reach the point of returning profit. If, when that is reached and a demand has been created larger than the facilities then possessed by the patentee or assignee can immediately supply, those who have taken no risk and invested nothing in bringing the invention to this point and creating a market for it are to step in, shatter the exclusive right of those who have borne this burden, and deprive them of the legitimate fruits of the labor and expense and risk thus incurred, no inventor could induce capable and prudent men to put their time and capital into such a hazardous enterprise; and of the few inventors that might have capital of their own, none could afford to sacrifice it in this way. Of the inventions which seem most promising at the outset, a large proportion, for unexpected reasons, after expensive experimentation, have to be abandoned, objections being discovered which would make it only an imposition to put

them upon the market. In exploiting a new art, it may be necessary to acquire title under many patents applicable to that art in order to develop out of them a machine, process, or article which neither of them alone would supply, and which owes its practical value to the absorption of many inventions in a common product. It is to the public interest to have those inventions which prove less valuable eliminated and those which experimentation has proved to be most valuable retained. The right to exclusive control, for a limited term, over what has been produced at such risk and expense is necessary not only to induce such investments and such development, but also as a motive for the original invention. If inventions cannot be disposed of by the inventor upon terms, or under conditions, that justify paying him substantially for them, they are of no value to him and will become of no value to the public. The motive for making invention is withdrawn, and the whole policy of our law, which has been eminently successful in building up our arts, is reversed.

The provision that the right to compel licensing shall not operate while the inventor retains all rights under the patent does not lessen the mischievous effect upon him, or the deterrent effect upon those whose capital and expense is necessary to bring the invention into public use. Whatever destroys the market for the invention destroys its value in the possession of the patentee. Investigations into the motive which may induce pressing one invention as against another are vicious and unreliable. The time within which licenses can be arbitrarily forced is fixed within three years from the date of application, which would often be before the actual issue of the patent, where there were contested rights in interference; and, even where the patent promptly issues, would be before those who had invested in the development of it could receive returns on their investment.

A system of enforced licenses not only denudes the franchise of most of its value, and destroys inducement to make and introduce inventions; it exacts such expense for determining and adjudging the right to license and the terms upon which licenses shall be granted as neither inventors nor most assignees can afford to incur before they have received larger returns than they are likely to receive until late in the life of the patent.

Intrenched interests of large capital, desirous of crushing innovations in the art by others, have every advantage in such a contest, and every motive for starting such suits as are here provided for before the owners of the patent have become sufficiently formidable to dispute the market with them. They can make such contests so expensive and harassing that neither patentees nor young manufacturing enterprises started under their patents can survive. If they obtain licenses, they can crowd to the wall and drive out of business those who have taken the initiative in introducing the invention, who are solely dependent on the business built up under the patent, and after accomplishing this, can disparage the invention, suppress its manufacture, and make it impossible for others to profitably engage in such manufacture.

We think these amendments, if enacted, would greatly disappoint those who have advocated them, would be vastly more mischievous than advantageous, and ought not to prevail.

The amendment entitled "Sec. 4" *requires all applicants for, and owners of, patents not domiciled within the United States to designate by notice filed in the Patent Office some person residing in the United States upon whom process or notice may be served.* This may serve a useful purpose in connection with interference proceedings. Presumably it is not intended to confer jurisdiction for the purpose of an infringement suit.

H. R. 3082, introduced Dec. 7, 1915, would amend the patent law by substituting compulsory licenses for exclusive ownership, and the objections which we have urged against this in the last-mentioned bill, apply with equal force to this.

H. R. 3630, introduced Dec. 10, 1915, and S. 2740, introduced December 17, 1915, practically re-enact Secs. 5, 9, 11, 12 and 25 of the Copyright Act of 1912, to insert in Sec. 5 the word "*scenarios*"; in Sec. 9, the provision that copyright for scenarios may be secured by *typewriting* the same, with notice of copyright; in Sec. 11, the word "*scenarios*"; in Sec. 12, "*typewriting*" after "publication," providing that if the author is a citizen or subject of a foreign nation, *one copy of the best edition published in the foreign country may be deposited*, inserting a provision that if the work be a scenario, there shall be

deposited a copy, print, photograph, or other identifying product; inserting, also, in Sec. 25, the words "*or scenarios.*"

Making no recommendation for or against such amendments, we deprecate this method of amending a statute, which compels scrutinizing a bill of some pages to discover the few verbal changes made.

H. R. 4689, introduced Dec. 14, 1915 (S. 683), making it "unlawful for any person, firm or corporation appearing before the Patent Office to use the name of any member of either house of Congress, or of any officer of the government, in advertising the said business," we cordially approved. It became a law April 27, 1916.

H. R. 6458, introduced Dec. 17, 1915, would be far-reaching in its effect, and has ardent support. Mr. Gifford wishes to suspend judgment concerning it. What is here submitted is concurred in by other members of the committee.

It authorizes the wholesale "registration" and exclusive appropriation of "designs" at nominal cost, without safeguards heretofore deemed necessary to prevent abuse. It would, in the opinion of the majority of the committee, be a heavy handicap upon the manufacturing industries, especially the small ones which cannot afford the increased expense incident to the investigations, litigation and indefinite liabilities, imposed by such a bill. It would stimulate cunning speculators to secure weapons for annoying or blackmailing those whom expensive litigation may ruin, and is a radical departure from the plan heretofore pursued in this country in granting exclusive rights. We deprecate any such extension of monopoly, based on no substantial contribution by the beneficiary of that monopoly, as this bill proposes. It grants to the *author of a "design new and original as embodied in or applied to any manufactured product of an art or trade, or his assignee," "copyright"* therein by registering it in the Patent Office and obtaining a certificate of registration, which becomes *prima facie* title sufficient to maintain suit. Examination into the originality of the device, even as applied to that article of manufacture, is not authorized as a condition of granting the certificate, only examining as to whether "*it complies with the formal requirement of this act.*" The application has simply to represent that the "affiant be-

believes himself to be the author, or the proprietor by reason of having lawfully acquired the right from the author, of the design *as embodied in or applied to the particular manufactured product*"; that he "*believes it new and original as so embodied in or applied to said product.*" It is not required that the *design* be novel. The Commissioner is not permitted to look behind such verification. The entire fee paid for such registration and certificate, giving protection for three years, is \$1, while this is increased to \$10 for 10 years, and \$30 for 20 years; *but one hundred such designs can be registered collectively, on a single application, for one dollar (that is one cent apiece) for one year, and such registrations can be thereafter extended.* This dollar (or cent each) is the entire cost for registration and certificates conferring a hundred distinct monopolies, each of which enables the procurer to drag into a federal court, under peril of injunction, accounting, and heavy statutory penalties, any he may *charge* with using a more or less similar design, though he may have been using it before such registration was applied for or thought of. Copies of designs included in such series are not to be furnished by the Commissioner except when required as evidence in cases of litigation or for court records "or on other due showing of reasons in his judgment sufficient." It is provided:

"That the registration of a design for one product shall not preclude valid registration by the original registrant of other designs of similar character embodied in or applied to other products of the same class when authorship or invention is involved in their production, nor shall registration under this act of a design for one manufactured product prevent valid registration by any one of other designs of similar character embodied in or applied to other manufactured products of other arts or trades."

In suits for infringement, plaintiff may recover not less than \$100 and costs, nor more than \$250, without proof of damages or profits.

This would enable those who are doing no real work in the arts to register by thousands theoretical designs without merit or originality, aimed to cover all conceivable forms, variations or applications that may spring up in such art, including those others are then using. The rule of infringement has been that

any such resemblance to a design as may mislead is sufficient to incur liability, though unintended and though the difference be such that comparison would distinguish them. This system of registration, without preliminary examination, where a hundred designs may be secured without appreciable cost, or any test of originality or merit, would encourage the business of procuring such registrations for the purpose of holding up and exacting tribute from thousands who could not afford to litigate; and no manufacturer or dealer would be safe in using a design with which he had been long familiar, or making any change in coloring or outline of anything that he was manufacturing. The avenues to search concerning liability are obstructed by this bill.

It is framed to enable foreigners who are citizens of countries having reciprocal patent law conventions with this country to obtain protection here by such registration. This includes most of the civilized countries. At the last Convention Relative to Industrial Property, held in Washington in 1911, at which 40 nations were represented, strenuous efforts were made in behalf of certain foreign countries to procure agreement to such a measure as this. It was earnestly resisted by representatives of this country, of England, Germany, Japan, and perhaps some others, and was defeated. The abuses to which it would be exposed seemed then to be a conclusive reason why this country should not acquiesce in it. The present bill appears like an effort to circumvent the action then taken. We strongly advise that it should not be passed.

H. R. 7624, introduced Jan. 5, 1916, would amend Sec. 62 of the Copyright Act by expressly defining public performance for profit so as to include a public performance in any place of business operated for gain where no direct pecuniary charge is made for admission to such performance. It excludes performances given exclusively for religious, charitable or educational purposes. Its purpose evidently is to relieve against the effect of decisions in the Court of Appeals of the Second Circuit (see 221 Fed., 229; 229 Fed., 340), holding that there is no remedy where, as in hotels and restaurants, copyrighted music is publicly performed by paid musicians, no admission fee being charged. If the profit to be derived from added patronage or added expenditures in restaurants and wine rooms is not such

profit as is contemplated by the present statute, we think it should be safeguarded by this amendment. Those who pay the charges of such hotels and restaurants do not realize that they are being entertained for other purposes than profit, and should not be compelled to regard themselves as recipients of charity.

H. R. 8356, introduced Jan. 8, 1916, re-enacts Secs. 28 and 30 of the Copyright Law with no substantial change except the insertion of the words "*school choir*" in Sec. 28, and the substitution of "*infringing copies, matter or material*" in lieu of "*piratical copies*" in Sec. 30. Both are, in our opinion, proper amendments.

H. R. 9712, introduced Jan. 21, 1916, seeks to create a new system of monopolies in business under the patent law, and provides that—

"any person, persons, firm, association, or corporation, domiciled within the United States or Territories thereof, who shall have invented any new and useful art, method, or system of transacting business, not known or used by others, and not described in any publication, and who shall comply with this act, and pay into the Treasury of the United States the sum of \$100, shall receive a patent therefor."

The term of this patent is to be 25 years, and the fund derived is to be applied to "*reduce any deficit.*"

There is no requirement of any examination into the novelty of the method or system of transacting business, unless this is to be inferred from the authority conferred upon the Commissioner to formulate rules and regulations. This may be, because it would be practically impossible for Examiners of the Patent Office to have any sufficient knowledge concerning the methods of doing business before practised to enable them to make such examination to advantage. The field open for speculative minds to assert such inventions, obtain such patents, and exact tribute from those doing business in a small way, who have no ready means of proving what methods of business were old and are unable to incur large legal expenses, would be inviting to a class of adventurers who are not deserving of encouragement. The embarrassments, vexations and impositions to which it would expose all classes of business men, including farmers and traders, especially those just embarking in business, would, we think, be exceedingly harmful and create much indignation. In our

opinion, such a bill should not be passed. If its primary purpose is to reduce the Treasury deficit, the hardship it would impose upon honest business would many times outweigh this advantage; and it would be to the public at large a very costly way of paying tribute to the Government. Patent protection, as an inducement to invention which supplies new articles of manufacture or new processes to the industrial arts, we think a profitable investment for the country. Systems of transacting business may be only cunning schemes for obtaining an advantage over the unsophisticated, or so indefinite in character as to be incapable of being defined and isolated under exclusive grants. The difficulty of ascertaining what was actually new and what was old would open a field for expensive and onerous litigation.

If the intent of the bill is (as its terms seem to imply) to exclude from the rights there conferred citizens of other countries, it should be observed that under conventions or treaties, citizens of the principal foreign nations are entitled to the same privileges under our patent laws as are conferred upon citizens of this country.

H. R. 10,231, introduced Jan. 27, 1916, re-enacts Secs. 21 and 31 of the Copyright Law, changing in Sec. 21 the limit of time for *ad interim* copyright protection, replacing the "thirty" before *days* in the last line but one of this section by "*ninety*," and inserting in Sec. 31, paragraph (*d*), after the word *imported*, in the first and third sub-divisions of this paragraph and after the words "imported into the United States" in the fourth subdivision, the following:

"with the consent of the proprietor of the American copyright or his representative."

We make no suggestion concerning the change in Sec. 21, but think the amendment to Sec. 31 practically nullifies the permission given by paragraph (*d*) under the first, third and fourth subdivisions, and that it would be altogether mischievous to make this amendment.

This paragraph (*d*) at present only confers by its first section the right to an individual who has bought a book "*published abroad with the authority of the author or copyright proprietor*" to bring home with him not more than *one* copy "*for individual use and not for sale*," and "*a foreign reprint of a book*

by an American author copyrighted in the United States" is now excluded from this privilege. Its present effect is merely to enable one who has bought the foreign edition, of which there is no duplicate in this country, from one who has published that book abroad under the authority of the owner of the copyright here, to bring home with him one copy for his own use, which he cannot sell. The proposed amendment destroys this right, or, what is the same thing, makes it subject to his obtaining the consent of the proprietor of the American copyright or his representative, *treating the purchase of the authorized edition abroad as not conferring such authority.* If paragraph (d) were omitted, the book could be brought here in any number if "the consent of the proprietor of the American copyright or his representative" were first obtained. The object of the paragraph as now in force is a thoroughly proper one. The proprietor of the American copyright who has, under his foreign copyright, authorized the sale of the book so purchased, has received, directly or indirectly, through that purchase tribute to his copyright. The purchaser cannot bring the book here for sale, but is permitted to retain one which he has bought there for his own use, this being further qualified by the provision that he cannot even do this if the foreign book is only a reprint of one in this country. The privilege is now only granted to one who has bought abroad of the publisher authorized by the owner of the American copyright, a book of which there is no similar edition printed in this country, and he is only permitted to retain for his own use the book he has so bought there. The proposed amendment in effect abrogates this privilege. It makes it impossible for anyone who, traveling abroad, has bought of one authorized to sell it under the copyright, a book of which there is no duplicate published in this country, to bring home with him, for his own use, the single copy so purchased. If he buys such a book to read on his way home, he must throw it into the ocean, though he had only half finished reading it. It would, of course, be generally impossible for the purchaser of such a book to communicate with the owner of the copyright in this country and get his special permission to bring home a book which he had bought abroad in this way, and there would be no occasion for these provisions of the statute if dependent upon

obtaining such an authority, for when obtained it would give full protection without these statutory provisions.

What is said concerning the first subdivision applies with equal force to the other two. The third is now limited to importing *for use and not for sale not more than one copy in good faith, by or for "any society or institution incorporated for educational, literary, philosophical, scientific or religious purposes,"* etc. The fourth applies only to cases where such book forms part of a library or collection purchased *en bloc* for the use of such societies, institutions or libraries as are designated in the third paragraph, or form part of a library or personal baggage belonging to persons or families arriving from foreign countries, where the books are not intended for sale. There is already an express provision against selling or using books so imported in any way that would violate the rights of the proprietor of the American copyright. We think the law already confers upon the owner of the copyright every privilege and security to which he can be fairly entitled, and that the proposed amendment would impose a most vexatious burden upon travelers and a restriction upon the rights of our libraries and similar institutions to avail themselves of foreign editions which are not obtainable in this country, where the owner of the copyright has already been specifically and amply recompensed.

H. R. 11,967, introduced Feb. 21, 1916, re-enacts Secs. 4886 and 4887 of the Revised Statutes in terms to exclude patents upon any drug, medicine, medicinal chemical, coal-tar dyes or colors, or dyes obtained from alizarin, anthracene, carbazol and indigo. It applies to patents issued on applications filed subsequent to the passage of the act, and does not exclude patents on processes for the preparation of such substances. Many of the valuable discoveries and inventions relating to these subjects consist in the composition of matter or combination of elements which create the new substance, rather than in any process of manufacture. This bill would withdraw such inducement to make inventions in these lines as the law now affords, and withhold such protection and reward for inventions so made as would tend to promote both invention and introduction into use. If such inventions are considered peculiarly desirable at this time, it would be a reversal of our policy to withdraw these incentives

and inducements from a field in which we should especially seek to stimulate invention and progress. If this is resorted to because of the stringency created by foreign wars, it should be observed, first, that it is likely to have the opposite effect from that desired; and, second, that as it can only operate on patents applied for subsequent to the time when the law takes effect (presumably patents issued some years in the future), the check upon invention thus imposed may not throw open to the public any inventions in these lines during the probable continuation of the war. It is unfortunate there has not been more invention in this line in this country heretofore; this is a time to induce it rather than discriminate against it; all encouragement should be given to such invention rather than such a step as this taken to discourage it.

The proposed amendment to Sec. 4887 provides that *in case drugs, dyes and other articles before referred to for which a patent has been granted on the process of preparation, on an application filed subsequent to the passage of this act, shall not be manufactured in the United States under authority of the patent within two years of the grant of the patent, and if, after commencement of such manufacture, the same is not continuously carried on in the United States in such manner that any person desiring to use the article may obtain it from a manufacturing establishment in the United States, the patentee shall have no rights under the patent laws against any citizen of the United States who imports such article, or produces it, or manufactures it in the United States, or handles for sale or use an article so imported or manufactured.*

We think this unwise and calculated to defeat the object which the author seeks to accomplish. If, after an invention is introduced, it proves so attractive that the inventor is unable to instantly supply everybody he should not have his right to the invention revoked. Our policy has been to encourage such exploiting of an invention as may create a demand beyond what can be at once supplied, depending on the inducement to extend manufacturing facilities afforded the patentee by his exclusive right. There is no reason why that policy should be departed from in respect to such articles as are here referred to, or why such discrimination should be made. There can be no advan-

tage from such an act during the present exigency, for (except as discouraging invention) it can only take effect some years in the future, and legislation framed with reference to peculiar conditions not likely to exist when that legislation goes into practical operation is not advisable.

If the intent is to distinguish between rights conferred on American citizens and rights available to citizens of other countries, we again call attention to the treaty obligations, which have to be taken into account when framing such legislation. In our opinion these amendments are not desirable.

H. R. 12,196, introduced Feb. 24, 1916, is intended to relieve a condition created by the foreign war, and provides that any applicant for patent, trademark or label within the provisions of Sec. 2 of the act, who shall be unable, on account of the existing state of war, to file application or pay the official fee or take any required action within the period now limited by law, shall be entitled, upon proof of such inability—

“to a respite not greater than nine months in which to file such application or pay such fee or take such action.”

Sec. 2 defines this act as available—

“only to the citizens or subjects of countries actually at war whose government shall have extended substantially similar privileges to citizens of the United States, and only in case the applicant shall first have filed a similar application in his home country within the time provided by law therefor.”

It further provides that the provisions of this act shall not be available to citizens of any country which may become at war with the United States.

The main object is to secure to citizens of this country similar rights in those countries where their protection would otherwise become forfeited, corresponding legislation in such countries being presumably available only to citizens of countries in which there is such legislation. In some respects it is more important to citizens of this country to secure these privileges abroad than it is for foreign citizens to secure them here, since patents owned by Americans in foreign countries are generally subject to forfeiture if certain fees are not paid or certain things done at frequent intervals during their term. We think a bill serving this purpose is entitled to favorable consideration, but that this

should be made more definite in some respects and more inclusive in others.

Whether the respite referred to in the first section is limited to nine months from the time of the default, or nine months from the time the disability is removed, is not clear. If the former, it might be insufficient; if the latter, six months would seem to be ample. Sec. 2 seems to *exclude* from those to whom the act is available *citizens of this country* who, by reason of being in countries at war, are detained in such countries (as many citizens of this country are) and are exposed to the forfeitures referred to, and also citizens of other foreign countries who, for the same reason, are prevented from making their payments and so exposed to forfeiture. There is no reason why if citizens of this country are caught in Germany, France, or other country at war, or are serving there in capacities that make it quite as difficult as for citizens of those countries to protect their rights, they should be treated less favorably than foreigners; or why citizens of Holland, or Spain, or Switzerland, who are similarly detained in the belligerent countries, should be excluded from the privileges here conferred. We suggest whether there should not be a provision by which manufacturers who have, in good faith, without knowledge of such applications, intermediate between the term then prescribed by law for making application and the time of actual application under this act, started the manufacture of the patented article or the use of the patented process, on a commercial scale, and have thereafter continued the same without substantial interruption, should be protected against disturbance under patents so procured, and articles of their manufacture equally protected in the possession of purchasers deriving from them. We think this would relieve the act of the principal objection which may be urged against it.

H. R. 12,542, introduced Mch. 1, 1916, re-enacts Secs. 4898, 4906, 4935, 4936 and 4921 (relating to patents), making, for the most part, only minor changes. The amendment to 4898 adds to the provision "An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded

in the Patent Office within three months from the date thereof " the following—

"or prior to such subsequent purchase or mortgage."

In our opinion the amendment is desirable, except that it should read:

"or 10 days prior to such subsequent purchase or mortgage."

One who has examined the Patent Office record as late as practicable before entering into a transaction concerning a patent which appears not to have changed hands, and who, upon the strength of such examination, immediately consummates a purchase of such patent from the apparent owner, should not be exposed to the peril of having an assignee who has held an unrecorded title for years slip in after such examination is made, perhaps the day before the purchase is consummated, and by then filing for record obtain precedence over one who had used every reasonable precaution and had been misled by the failure of the former assignee to file within the statutory limit. If an examination has been made of the records at Washington immediately before entering into negotiations for purchase in Denver or some other distant city, and that negotiation is consummated in reliance upon such examination, there ought to be some margin allowed within which such examination could be depended upon as against those who had not promptly recorded, and the one actually in default should suffer if either is to suffer.

We suggest adding at the end of the next paragraph, after "grant or conveyance," the words "and shall have the same effect in a certified copy of such instrument." The advantage of such an acknowledgment as *prima facie* evidence of execution should extend to those who rely upon a certified copy equally with those who hold the original instrument, and there should be no room for controversy over this.

The change made in Sec. 4935 *deprives patentees of the privilege of paying their fees to the treasurer or any of the assistant treasurers of the United States, or designated depositaries or receivers of public money, and having the payment take effect on the date of such payment.* This was a fair provision, equalizing as far as possible the rights of those located at a distance from Washington with those located there or nearby. This amendment would destroy the advantages so conferred and place

those living at a distance from Washington, and especially those whose solicitors also are at a distance from Washington, at a substantial disadvantage, exposing them to forfeiture by reason of the time consumed in transmitting the required fee to Washington, or by loss or delay in the mails, destruction of mail cars, etc. Their rights might be destroyed by reason of delay incident to transmission from their residence to Washington, or, where the payment was seasonably mailed, by reason of some failure in the mails, where they would be perfectly safe if the payment were made to the government as provided by the statute now in force. We think the amendment an unjust discrimination against those remote from Washington, and that the statute should remain in this respect as before.

The amendment to Sec. 4906, relating to the issuance of subpoenas *duces tecum* in contested cases in the Patent Office is desirable. There are minor other changes about which we make no suggestions.

S. 4890, introduced Mch. 9, 1916, H. R. 13,348, introduced Mch. 17, 1916, and S. 5183, introduced Mch. 22, 1916, are substantially the same, and re-enact clause (b) of Sec. 25 of the Copyright Law to insert the words "print or pictorial illustration" after the word "photograph." This we regard as a proper amendment. They re-enact Sec. 40 without material change, except to add:

"Provided, however, that if only the minimum amount specified in this act for damages shall be awarded, each party shall pay his own costs."

There is some reason in this amendment, but we suggest the adjustment of costs in such cases should be left to the discretion of the court in view of all the circumstances.

H. R. 13,618, introduced Mch. 23, 1916, would amend the law relating to design patents by providing that where the design has been secured for the shorter term, it may be extended to one of the longer terms upon the payment of the difference between the fee paid for the shorter term and that which would have been exacted for the longer. We think this is not an improvement upon the present law but the reverse, that it materially increases the labor imposed upon the Patent Office without paying for such increase. The Patent Office receives no

compensation for the added burden put upon it in considering and granting the extension, while the applicant retains the interest upon the money meanwhile and the public has not the advantage of being informed when the patent issues whether it is to be asserted for the longer or shorter period. The present law is in this respect quite favorable enough to design patents.

H. R. 15,666, introduced Apr. 15, 1916, is similar in substance to *H. R. 6458*, with minor modifications, and subject to the objections heretofore urged against that.

Some amendments have been proposed to these bills, to which we cannot refer without unduly extending this report.

There are two other bills pending, not sufficiently within our province to justify action concerning them as a committee, but which, by reason of their effect upon the federal court, before which causes arising under these laws are heard, deserve notice. One aims to immediately vacate the clerks' offices of the district courts and courts of appeal, conferring upon the President the power of appointment and removal. The other authorizes the President to immediately appoint successors to all judges of the district courts and courts of appeal who have reached the age of 70, depriving the present incumbents of their rank and subjecting them to assignment to district court work. Members of your committee, as individuals, endeavored to bring to the attention of the Judiciary Committees of both Houses and others what they conceived to be serious objections to these bills.

Respectfully submitted,

ROBT. H. PARKINSON,
MELVILLE CHURCH,
JAMES R. SHEFFIELD,
LIVINGSTON GIFFORD,
EDWARD RECTOR.

REPORT

OF THE

COMMITTEE ON PUBLICITY.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your Committee on Publicity respectfully submits the following report:

The committee has secured publicity for the work of the Association in the following ways:

(a) A mailing list of more than 350 names has been prepared containing the names of legal journals and other periodicals throughout the United States which are interested in the work of the Association. Advance copies of all printed matter of the Association are forwarded to these publications.

(b) The Secretary of the Association from time to time furnishes the Chairman of the committee with items of information relating to the Association which are of general interest. This information is put in the form of a statement, which is handed by the Chairman to all of the New York newspapers and to the New York representatives of the great news associations.

(c) As the time of the annual meeting approaches, photographs of the chief speakers and of the prominent members who attend are secured for the use of the press. Advance copies of the speeches to be made are obtained and these, together with other matters of general interest, are brought to the attention of the newspapers.

Public interest in the doings of the Association is increasing and accordingly more space is given to us by the newspapers. During the past year the committee has had no difficulty in securing adequate publicity for the work of the Association and, as the gathering at Chicago promises to be a memorable one, it will attract a good deal of public attention.

Respectfully submitted,

WILLIAM M. CHADBOURNE,
MARQUIS EATON,
FRANCIS FISHER KANE,
HENRY E. DAVIS,
ADELBERT E. BOLTON.

NINTH ANNUAL REPORT

OF THE

SPECIAL COMMITTEE TO SUGGEST REMEDIES AND FORMULATE PROPOSED LAWS TO PREVENT DELAY AND UNNECESSARY COST IN LITIGATION.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The special committee appointed at the meeting of this Association in 1907, and continued at each annual meeting since then, was charged with the duty of considering carefully, alleged evils in judicial administration and remedial procedure, and suggesting remedies and formulating proposed laws. We now submit our report upon the work done by us since the last meeting of the Association.

1. REFORMED PROCEDURE BILL.

This bill was Schedule C in our report of 1915. As instructed by the Association, your committee met in December, 1915, and laid the bill before members of Congress. It was introduced by Senator O'Gorman in the Senate, January 14, 1916, and in the House of Representatives by Mr. Dupré, of Louisiana, January 19, 1916. Your committee had a hearing upon these bills before the Judiciary Committee of the House and before a subcommittee of the Judiciary Committee of the Senate on the 25th and 26th of January, 1916. The subcommittee of the Senate was composed of Senators Overman, Sutherland, Brandegee and Walsh.

This bill had been reported favorably from the Judiciary Committee of the Senate in the previous Congress, January 5, 1915. We were therefore surprised to learn that the Judiciary Committee of the Senate had voted to amend the bill, and that it had been reported in the form of which a copy is annexed hereto, marked Schedule A.

On the other hand, the bill, with verbal amendments, to which your committee had agreed, was reported in the House February

26, 1916. A copy is annexed hereto and marked Schedule B. Mr. Dupré, who introduced the bill, had been transferred from the Judiciary Committee to the Committee on Floods in the Mississippi Valley, and the report was presented by Mr. Gard, of Ohio. This report expresses the arguments in favor of the bill so clearly that we annex a copy hereto, which is marked Schedule C.

Your committee thereupon conferred with each other in reference to the Senate amendments, and corresponded with Senator O'Gorman, with Mr. Gard, and with other friends in Washington. The result of this conference was the decision to ask that consideration of the bill as reported in the Senate be deferred until after action by the House upon the bill as reported there. The bill in this form passed the House, June 16, 1916. The country owes a debt of gratitude to our friends in the House, especially Mr. Dupré and Mr. Gard, for their active support of this important bill.

It seemed to your committee that the amendments in the Senate were so serious as to deprive the bill of all its value. We therefore prepared a brief which was submitted in the House of Representatives by Mr. Gard, and of which a copy has been sent to each Senator.

In the preparation of this brief, we derived benefit from the assistance of Mr. W. H. Shepardson, of the Harvard Law School, who was suggested for the purpose by Prof. Felix Frankfurter.

In this brief, of which copies will be available at the meeting of the Association, we point out that under the rule which has for many years prevailed in many courts in this country, reversals and new trials are very frequent. A notable instance of the delays under the present system is the Hillmon case, 145 U. S. 285; 188 U. S. 208. The second reversal was twenty-three years after the suit was begun.¹ This was an action brought by a widow to recover life insurance.

¹ The latest instance is *Pressley vs. Bloomington, &c., Co.*, 271 Ill. 822, 184 Ill. Appeals 113; 164 Ill. Appeals 167; 158 Ill. Appeals 220. Here the intestate was killed October 20, 1907. A fifth trial has just been ordered. See article by Prof. Wigmore, *Illinois Law Review*, May, 1916.

We then point out that this mischievous practice of reversing a judgment for technical errors had become so sanctioned by precedent in some of the circuits that the judges seemed obliged to act upon the rule stated in *Waldron vs. Waldron*, 156 U. S. 380 (1894):

"It is elementary that the admission of illegal evidence over objection necessitates reversal."

The same rule is stated in an earlier case in Massachusetts, *Ellis vs. Short*, 21 Pickering 142, 144. The court says:

"We regret that we find it necessary to do this; because the action involves no principle of law, is attended with an expense disproportionate to its importance, has been fully and elaborately tried, and has been brought to a result which was entirely satisfactory and which there is very little reason to suppose will be changed on another trial by the exclusion of the evidence which was improperly admitted."

A similar regret is expressed by the New York Court of Appeals in *Lewis vs. Long Island R. Co.*, 162 N. Y. 50, 67.

This was a departure from the early American rule, which was thus stated by Chief Justice Marshall in *Church vs. Hubbard*, 2 Cranch 232:

"It is desirable to terminate every cause upon its real merits, if those merits are fairly before the court, and to put an end to litigation where it is in the power of the court to do so."

Again, in 1828, Mr. Justice Story, delivering the opinion of the court in *McLanahan vs. Ins. Co.*, 1 Peters 170, 183, said:

"If, therefore, upon the whole case, justice has been done between the parties, and the verdict is substantially right, no new trial will be granted, although there may have been some mistakes committed at the trial."

Unfortunately, in *Crease vs. Barrett*, 1 C. M. & R. 932, the English Court of Exchequer laid down what was really a new rule in England, that a new trial should be granted if the error found by the appellate court could possibly have affected the jury. Of Baron Parke, who was largely responsible for the adoption of this rule, Goldwin Smith justly said that "he cleverly reduced the law of England to an absurdity."

This rule was changed in England by a rule of the Supreme Court (1883), and the original practice was restored. The burden

of proof was put upon the appellant to show that the error had caused substantial injustice. Under this rule the courts in England now do as Lord Chief Justice Reading said in his address to the New York Bar Association in 1915:

"We now strive to get at the merits; to allow no technicalities to prevent the court from perceiving the true facts, and arriving at a just decision."

On the other hand, under the Exchequer rule, which had been adopted to a great extent in the courts of this country, a careful analysis which was presented to this Association showed that 46 per cent of all the common law cases in the United States courts in which writs of error had been taken out had been reversed, and that 50 per cent of those reversals were for alleged errors in procedure matters.

One of the best statements of the evil of the Exchequer rule was made by Mr. Justice O'Gorman, now Senator, before the Commission on the Law's Delay, which was created in the State of New York:

"One of the gravest faults with our present mode of trial is the ease and frequency with which judgments are reversed on technicalities which do not affect the merits of the case and which at no stage of the case have affected the merits.

"We have a rule in our state that the commission of an error upon the trial of a cause by a trial justice is presumptively prejudicial to the appellant, and instead of the appellant being required to persuade an appellate court that he has suffered substantial wrong, the moment that he can place his finger on a technical error the burden is at once shifted and the respondent required to persuade the court that there was no harm following that particular ruling. Now we all know, and there are few who seek to vindicate the practice, that very many cases are sent back from the Appellate Division upon alleged errors which have never affected the merits of the case."

Our brief then proceeded to point out that, as a result of the protest by the Bar against this practice thus condemned by the judges whose opinions have been quoted, and by many others, the practice in this respect had been changed in many of the states. In the movement for this reform, the action of this Association and the reports of this committee which have been presented annually for eight years and which have been extensively circulated, have had an important part. The law in the following

states is substantially in accord with that embodied in the bill which this Association has repeatedly recommended (Schedule A):

Alabama,	Indiana,	Minnesota,	New Hampshire,	Oklahoma,
Arizona,	Iowa,	Missouri,	New Jersey,	Pennsylvania,
California,	Kansas,	Montana,	New Mexico,	Texas,
Florida,	Kentucky,	Nebraska,	New York,	Wisconsin,
Illinois,	Michigan,	Nevada,	Ohio,	Wyoming.

The law in the Territory of Alaska is the same.

It should be observed that in New Hampshire and Pennsylvania, and, as far as we have been able to ascertain, in Alabama and Minnesota, the change was effected by the courts without legislation. We congratulate the Association upon these beneficial results, in accomplishing which its efforts have largely co-operated, and urge its members to endeavor to secure the adoption of this reform in the federal jurisprudence and in all the states.

2. PRACTICE IN JURY TRIALS.

On the 7th of January, 1916, the President of the Association, Senator Root, convoked a meeting of the Executive Committee of the Association and of the chairmen of its different committees. At this meeting reports were presented, stating the work of the different committees, as marked out for them by the Association in 1915. Special reference was made to the proposed Practice Code, which had been introduced in the Sixty-third Congress, had been considered in the Senate, had been referred by the Senate to a subcommittee to examine during the recess, and came up again for consideration and discussion before that subcommittee in November, 1915.¹ The bill, as introduced in the Sixty-fourth (the present) Congress, was S. 1412. Special attention, at the meeting just referred to, was called to Section 164 of this Senate bill, which is as follows:

"In jury trials, the judge shall not express to the jury any opinion on the facts, or make any comment on the weight of the evidence."

¹ The adoption of such a code was recommended by this Association in 1882.

We found that an admirable brief in support of the proposition that Congress had no power to pass such a section—in other words, that the duty of the judge to aid the jury in considering the facts, leaving the final decision to them, was a part of the common law trial by jury which was guaranteed by the Constitution—had been presented to the Judiciary Committee of the Senate by Mr. Thomas W. Shelton, an honored member of this Association (report of hearing before Senate Judiciary Committee, November 10, 22, 1915, pp. 30-46).

It was the unanimous opinion of the meeting referred to that this committee should ask to be heard in opposition to this Section 164 of S. 1412.

We were heard at length, and subsequently presented a brief, in the preparation of which we were aided by Mr. Henry W. Taft, Chairman of the Law Committee of the New York State Bar Association. We had also valuable assistance from one of his juniors, Mr. J. F. Collins.

In this brief, we did not undertake to repeat the work which had been done so well by Mr. Shelton, but contented ourselves, after renewing the point taken by him, with presenting the authorities in which the advantage of the practice which has always prevailed in the federal courts was forcibly presented. We referred especially to *Carver vs. Jackson*, 4 Peters 80, and *Games vs. Stiles*, 14 Peters 327. The nature of the practice and the advantages of it were so well stated by Mr. Justice McLean in the latter case that we quote them:

"Care must be taken that the jury is not misled into the belief that they are alike bound by the views expressed upon the evidence and the instructions given as to the law. They must distinctly understand that what is said as to the facts is only advisory, and in nowise intended to fetter the exercise finally of their own independent judgment. Within these limitations, it is the right and duty of the court to aid them by recalling the testimony to their recollection, by collating its details, by suggesting grounds of preference where there is contradiction, by directing their attention to the most important facts, by eliminating the true points of inquiry, by resolving the evidence, however complicated, into its simplest elements, and by showing the bearing of its several parts and their combined effect, stripped of every consideration which might otherwise mislead or confuse them. How this duty shall be performed depends in every case

upon the discretion of the judge. There is none more important resting upon those who preside at jury-trials. Constituted as juries are, it is frequently impossible for them to discharge their function wisely and well without this aid. In such cases, chance, mistake, or caprice may determine the result."

In the following states the same practice has always prevailed: Arizona, Connecticut, Delaware, Idaho, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Wisconsin, Wyoming. The rule is the same in the District of Columbia.

They had by the last census a population of 36,230,592. The total population of the states, including Alaska, by that census was 91,972,266.

In this brief we gave numerous citations from authorities in the different states, showing that the rule had been administered without infringing upon the principle that it is the right of the jury to decide questions of fact, and that it had proved of very great advantage.

We also pointed out that in some of the states where the legislature had under taken to limit the powers of the court in this respect, the courts had construed the statute strictly and had substantially maintained the common law rule.

McClellan vs. Wheeler, 70 Maine 285.

Plummer vs. Boston El. R. Co., 198 Mass. 499, 514.

And we drew attention to the admirable statement of one of Georgia's greatest judges (Nisbit, J., in *Cook vs. State*, 11 Ga. 53, 57):

"It is to be feared in these days of reform, that the judges will be so strictly laced as to lose all power of vigorous and healthful action. I have but little fear of judicial power in Georgia so aggrandizing itself as to endanger any of the powers of other departments of the government, or to endanger the life and liberty of citizens, or to deprive the jury of their appropriate functions. The danger rather to be dreaded is making the judges men of straw, and thus stripping the courts of popular reverence, and annihilating the popular estimate of the power and sanctity of the law."

When we refuse to permit an experienced judge to comment on the testimony "it is as though we should drive all the archi-

teets and builders into exile and construct wigwams for ourselves."¹

The committee is glad to report that the subcommittee of the Senate reported the Practice Code with this section stricken out. We are informed that if the bill should come to a vote in either house, an attempt will be made to restore this section. The Practice Code, with that section in it, had passed the House in the Sixty-third Congress. The proposed section, to which reference has been made, was not contained in the bill as drafted by the Commissioners to Revise the Judiciary Act.

The amendment, which became Section 164, was introduced in the House in the Sixty-third Congress by Mr. Cullop, of Indiana. When it was considered in the House in Committee of the Whole, there were present only fourteen members: nine Democrats, three Republicans, and two Progressives (*Congressional Record*, p. 9767, June 3, 1914). We mention this because we should regret to have it supposed that the House of Representatives had deliberately considered this particular section and given it the stamp of its approval.

3. OTHER FEATURES OF THE PRACTICE CODE.

It seemed to your committee, at our meeting in Washington, that it would tend to give more weight to our argument on Section 164 if we were to consider the proposed Judicial Code and present any amendments to it which seemed to us desirable. In doing this we stated distinctly that the Association had not, at its meeting, passed upon these amendments, but that we suggested them of our own motion and for the purpose of aiding the Senate in the very careful consideration which it was giving to the Practice Code. We were glad to find, when the bill was reported, that most of these amendments suggested by your committee were adopted.

These amendments, in brief, are as follows:

Section 186: Provides for making the United States a defendant in suits for foreclosure. The bill as drawn provided only for partition suits.

¹ Senator Sutherland's address to American Bar Association, report 1912, p. 386.

Section 271: Allows the appellate court to take new testimony in equity cases where the interest of justice requires.

Section 277: Makes costs taxable against the United States in case of an adverse decision.

Section 284: Allows an amendment on appeal in all cases.

Section 333: Simplifies the exception to the statute of limitation in criminal cases, so as to provide that "the time during which the person committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceeding."

4. CLERKS IN FEDERAL COURTS.

In February, 1916, the Committee on Federal Legislation of the Association of the Bar of the City of New York, of which Mr. Walker D. Hines is Chairman, called our attention to S. 3055. This provides that the clerks of the federal courts shall be appointed by the President by and with the advice and consent of the Senate, for terms of six years. We found that the Committee of the New York State Bar Association and the National Civil Service League, as well as other bodies, were opposing this bill. It seemed to some of your committee quite clear that the change proposed was not in the interest of good administration; that it would tend to throw the appointment of the clerks of the federal courts into politics, and would make them in effect political appointments; that this would tend to cause delay and increase cost of litigation, and that therefore it was appropriate for your committee, unofficially and without in any way claiming to represent the Association, to oppose the bill. This accordingly we did. We are advised that there is no probability of the bill coming up for action at the present session.

5. JURISDICTION SUPREME COURT.

Our attention has been called by the Committee on Federal Legislation of the Association of the Bar of the City of New York to several bills pending in the present Congress which propose to alter the existing provisions for the review in the Supreme Court of judgments of the highest courts of the states, and also of the Circuit Courts of Appeal. As these matters had

not been specifically referred to this committee, we did not feel justified in taking formal action upon them. In general, it may be said that they take away the right to a writ of error, issuing out of the Supreme Court, in many cases arising under the Constitution and laws of the United States, and substitute therefor a remedy by certiorari. So far as we can learn, the main argument advanced in support of the proposed changes is that the Supreme Court is overburdened with the work now imposed upon it, and that it is necessary to restrict the right of review in that court.

The subject of relieving the Supreme Court was fully considered by a special committee of this Association, consisting of nine members, who were appointed pursuant to a resolution adopted in August, 1881. The majority report, presented at the meeting in August, 1882, was signed by five members, the minority report by four. The majority report recommended the establishment of intermediate circuit courts of appeal. The minority report advocated the adoption of a statute allowing the Supreme Court to sit in divisions and provided that a quorum of each division might be less than a majority of the whole. Two of the greatest lawyers this country has ever produced, William M. Evarts and E. J. Phelps, signed and advocated the minority report.

It was stated in the debate¹ that the Supreme Court was opposed to the plan recommended by the minority of the committee. The principal objection taken by the majority to the plan proposed by the minority was that the Constitution provides that there should be "one Supreme Court," and that a court sitting in sections could not be considered to be one court. After full debate, the majority report was adopted by a vote of 39 to 27.

The plan which has since been adopted in New York and other states was not apparently considered by either side. This plan provides for an increase in the number of the court, with the proviso that the whole number shall not sit at the same time, and that the concurrence of less than a majority of the whole number shall be sufficient to make a decision. For example: If the number of justices of the Supreme Court were increased

¹ Reports, American Bar Association, Vol. V, pp. 19 to 101.

to fifteen, nine would be the largest number that would sit to hear any particular case, and the concurrence of five only would be necessary to a decision. This would enable the court to transact business through the whole term without recess. In the New York Court of Appeals there are eleven members. Seven usually sit, though five constitute a quorum, and the concurrence of four is necessary to a decision.*

It is to be noted that Mr. Evarts stated in the debate that, in his opinion, five was a sufficiently large number of judges to hear any appeal, except when grave constitutional questions were involved. He said that, in his opinion, five judges would dispose of ordinary appeals with greater satisfaction to litigants than the larger number. Probably no lawyer in America ever argued more appeals than Mr. Evarts. His opinion is certainly entitled to consideration.

This plan has been tried in some of the states, notably in New York, and has been successful. It has given more satisfaction than another alternative plan of establishing two divisions of the same court, or a commission, to sit at the same time with the principal court.

The latter plan, adopted in New York and other states, has all the advantages of that proposed by Mr. Evarts and Mr. Phelps, and is substantially that which has for many years prevailed in England. That is to say, it is very unusual to have all the law lords sit upon the hearing of any one appeal to the House of Lords. All the judges who are qualified to sit in the Judicial Committee of the Privy Council do not usually sit to hear any one appeal.

It deserves very serious consideration whether the adoption of such a plan in this country would not be wiser than to limit further the jurisdiction of the Supreme Court.

It will be remembered that when Mr. Evarts was a Senator, he yielded to the judgment of this Association, as expressed in 1882, and supported the bill which established the present system of courts of appeal intermediate between the district courts and the Supreme Court. This bill became a law March 3, 1891. It has undoubtedly relieved the Supreme Court greatly and given gen-

* Constitution, State of New York, Article VI, Sec. 7.

eral satisfaction. It is to be observed that these courts of appeal are generally held by three judges only, although in many cases their decision is final. The success of this method indicates the soundness of Mr. Evarts's argument, that the hearing of an appeal before a large number of judges is not essential to the satisfactory administration of justice.

Notwithstanding the relief given by these intermediate courts of appeal, the docket of the Supreme Court is increasing in length; and the court has latterly been compelled to refuse writs of certiorari in many cases where they would have been granted 20 years ago. The enormous increase of the functions of the federal government and the many statutes that have been passed in reference to interstate commerce, and the rights and duties of those engaged in it, have greatly increased the volume of litigation in the federal courts. Cases involving questions under these statutes are frequent in the state courts. These statutes are new. It is inevitable that much litigation should arise respecting them, and for many reasons it is very desirable that questions arising under them should be finally settled by the Supreme Court. If authorized by the Association, we should be glad further to consider these matters and the bills to which reference has just been made.

RESOLUTIONS.

Your committee recommend for adoption the following resolutions:

"Resolved, That the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation be continued with the powers heretofore conferred upon it, and that it be instructed to take such steps as it shall deem expedient to secure the passage of the bill heretofore recommended by the Association, as the same has been amended in the House of Representatives, in the form specified in Schedule B annexed to this report.

"Resolved, That the action of the committee in reference to the legislation respecting the Practice Code (S. 1412) be approved.

"Resolved, That the action of the committee in reference to the legislation respecting the appointment of clerks in the federal courts (S. 3055) be approved.

"*Resolved*, That the committee be authorized to take such further steps as it shall deem expedient to oppose the adoption of the legislation mentioned in the report in reference to proceedings on jury trials and in reference to the appointment of clerks of the federal courts should these matters again come before the present Congress.

"*Resolved*, That the committee be authorized to consider the bills which now are or may hereafter be pending before Congress with reference to the jurisdiction of the Supreme Court, and to cooperate with committees of other Bar Associations in reference thereto."

All of which is respectfully submitted.

EVERETT P. WHEELER,
SAMUEL C. EASTMAN,
ROSCOE POUND,
FRANK IRVINE,
R. E. L. SANER,
HENRY B. F. MACFARLAND,
FREDERICK A. FENNING,
J. G. SLONECKER,
PAUL HOWLAND,
JOHN D. LAWSON,
ADELBERT MOOT,
ALBERT C. RITCHIE,
EDGAR A. BANCROFT,
HENRY H. WILSON.

NOTE.—Mr. J. L. Thorndike, is on the committee, and aided in its labors, but his engagements prevented him from examining the report before it was printed.

SCHEDULE A.

SENATE CALENDAR No. 133. S. 3551.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1916.

Mr. O'Gorman introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

FEBRUARY 14, 1916.

Reported by Mr. O'Gorman, with amendments. (Omit the part in brackets and insert the part printed in italic.)

A BILL

RELATING TO THE PROCEDURE IN THE UNITED STATES COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 269 of the Judicial Code, approved March 3, 1911, be, and the same is hereby, amended by adding at the end thereof the following:

"No judgment shall be set aside or reversed or a new trial granted by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, [unless] *if* in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has *not* injuriously affected the substantial rights of the parties."

SCHEDULE B.

HOUSE CALENDAR No. 57. REPORT No. 264.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 19, 1916.

Mr. Dupré introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed. (H. R. 9428.)

FEBRUARY 26, 1916.

Reported with amendments, referred to the House Calendar.

A BILL

RELATING TO PROCEDURE IN UNITED STATES COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 269 of the Judicial Code, approved March 3, 1911, be, and

the same is hereby, amended by adding at the end thereof the following:

“No judgment shall be set aside or reversed nor shall a new trial be granted by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties.”

REPORT

OF THE

SPECIAL COMMITTEE ON REPORTS AND DIGESTS.

(To be presented at the meeting of the American Bar Association, at Chicago, Ill., August 30, 31, September 1, 1916.)

To the American Bar Association:

"Of making many books there is no end and much study is a weariness of the flesh." Prophecy, perhaps, when uttered by the preacher nearly three thousand years ago, but today it is a statement of facts. From the best data at hand, there were over 18,000 opinions of courts of last resort in the various states handed down in 1914, averaging about 2,000 words to the opinion, and making approximately 210 volumes of reports for the year. The joint authorship of "best sellers" may turn out more volumes, but the practical compulsion of purchase does not hang over the public, as it does over lawyers, of whom there are about 127,300 in the United States. One state (Missouri) for the last four years has averaged 16 volumes a year of the reports of the supreme and appellate courts. Lawyers in active practice are confronted with the problem of shelf room for the books they feel compelled to buy. For any additional statement of the problem we refer to the report of the special Committee on Law Reporting of this Association in 1895-96, of which Mr. Fiero was Chairman, and to the reports of the Standing Committee on Law Reporting and Digesting, of which Mr. Keasbey was Chairman, in 1905, page 460; 1909, p. 44; 1910, p. 531; 1911, p. 412; 1912, p. 469, and 1914, p. 527. The resolutions offered by the Standing Committee under which this committee was appointed are as follows:

"1. That the increasing volume of the reported cases is a burden for which some relief must be found, both in the selection of the opinions that are reported and in greater brevity in the opinions themselves.

"2. That it is desirable that there be substantial uniformity of plan and classification in digests of the statutes of the various states.

"3. That a committee be appointed by the President, consisting of one member from each state, the District of Columbia, and

the territories and insular possessions of the United States, to consider these matters and to confer with members of the Bar and with judges and reporters, and to recommend to this Association at its next meeting such action as they may think best to bring about the desired results" (Reports of American Bar Association, 1914, pages 25-28).

Following the scriptural plan, of the last, first:

I. This committee, in attempting to carry out the purposes of its appointment as expressed in these resolutions, has gathered, through its members, data from each of the states which it files with the Secretary of this Association, and a summary of which is attached to this report as Exhibit A. It will be noted that there is a great variety of constitutional and statutory provisions in regard to written opinions and the publication of reports. Some of the states have no such provision either in the constitution or in the statutes. Others require all opinions to be in writing and filed in the case. Some require the publication of the opinions, including citation of cases or abstract of briefs of counsel. Some require a statement of the facts in each case. Some limit the time within which the opinion shall be rendered. One state (Oklahoma) requires the judges of the Supreme Court to prepare and file with the papers in each case "full notes of the opinion of the court upon questions of law arising in the case within sixty days after decision of same"; another state (West Virginia), in its constitution, provides that "every point fairly arising upon the record of the case shall be considered and decided," and another state (South Carolina) requires the Supreme Court to consider and decide "every point made and distinctly stated in the cause and give the reason thereof concisely and briefly in writing." In some states the power is given to the court to determine what opinions shall be published. In others, the reporter is given discretion in regard to the publication of opinions. Such conditions make the need of uniformity strikingly apparent. This Association, through its Standing Committee or otherwise, ought to take steps to promote and bring about a uniformity of constitutional provisions and statutory regulations, so that every state in the union will follow practically the same rules.

In this connection, we find the volume of law in most of the states is now so great that it is becoming less necessary and much

less frequent to cite the opinions of courts of other states, and, as a result, there is a tendency to build up in each state a system of judicial law without reference to the decisions in other states. We regard this tendency as an evil one and fraught with dangerous possibilities. Every effort of our Association should be exerted toward bringing into complete harmony the decisions of all the states, so that there may be, so far as possible, uniformity in the law, for the whole country, and not different and conflicting general laws in the different states. It is true, as suggested by one member of the committee, that the primary duty of a lawyer employed in a case is to serve his client and not to try the case with an eye on the effect of the decision upon the development of law as a science, but lawyers, in their local, state and national associations, are not interested in the result in a particular case, but are interested in each case as a step in the development of the law as a whole.

II. There can be no question but that substantial uniformity in digests of the statutes of the various states is desirable not only on the ground of convenience, but as tending to cement the states into that harmonious and indivisible union dreamed of by orators and cherished by all patriotic citizens. Practically, it is regarded as impossible by many of the committee. The local conditions and traditions are so varied it will be extremely difficult to cover all by the same system, even by liberal use of catch words. The difficulty of the task, however, is not good cause for abandoning an effort to promote or further such substantial uniformity as may be ultimately obtained. State statutes are constantly changing, and we all know how hard it is many times to find the statute referred to in an opinion, which must be found before we can tell whether that case is in point in the case we have on hand. This leads to the suggestion that where courts refer to state statutes so much of the statute be quoted as necessary to show what part of the decision is based on the wording of the statute. This could be done in most cases without adding materially to the length of the opinion. There should be, through this Association, an annual conference of lawyers for the purpose of bringing about at least general conformity in such indexes or digests.

Many members of the committee have expressed their views on the systems of digesting reports as well as statutes.

We recognize the value of a standard system of digesting, but it is difficult to agree upon what that standard shall be. The most logical method is not the most practicable. Each lawyer seems to have his preference. The analytical mind selects one system, the synthetical mind another. The committee is practically agreed that the system adopted by the West Publishing Company embodies the idea of practicability, and is, generally, acceptable to the profession. The committee does not attempt to recommend any particular system of digesting, but desires to emphasize the beneficial results that would flow from uniformity in digests.

III. Coming now to the first paragraph of the resolutions, the relief prayed for (prayed in the spiritual and not the legal sense) seems to be as illusive as the secrets of alchemy.

The consensus of opinion seems to be that opinions of courts are too long, although we all recognize that there are cases wherein it is necessary to trace the history of the law applicable to new or unusual facts, and that, in such cases, a long opinion may be advisable and necessary. In some states there is no complaint as to the length of the opinions. We feel that there is no useful purpose served by printing an abstract of the briefs of counsel, and that the dissenting opinion, except in rare cases, should not be published. The citation of a long list of cases in support of perhaps well settled doctrines is as useless as it is frequent. Long quotations from other opinions seldom add anything to the value of the decision and merely pad the reports. When required to state the facts of the case in making application of the legal principles involved, only the ultimate facts necessary to a complete understanding of the case should be stated. It sometimes happens that the writer of an opinion makes a statement of the evidence from which he evolves as he goes along the facts on which the decision must be based. This has been called "thinking with the typewriter," and increases the length of the opinions very materially.

As to what is the most serious defect in connection with the publication of decisions, the answer varies with the different states. Generally, it is the length of the opinions, or that they so

often declare only well-settled principles. In states where the volume of judicial output is small, one of the most serious defects is the length of time required to accumulate sufficient material for the publication of official reports, and in most instances of this kind private enterprise supplies the need, the result being that the lawyers are practically compelled to purchase two sets of reports. Where the pressure of work is the greatest, the opinions are the longest. We are tempted to give a few samples of rewriting reported cases, but fear it would be unjust to the judges who wrote the opinions by calling attention to what are by no means the most flagrant cases, although the opinions are shortened from one-third to one-half without leaving out anything material. It is also suggested that a model opinion be given, but this is omitted because model opinions can be found by reference to the opinions of many of our great jurists.

The opinion of lawyers generally favors the publication of official reports in each state with as little delay as possible after the opinions are handed down. It is not thought advisable to do away with the publication of official reports and leave the matter to private enterprise, although for one state (Louisiana) the West Publishing Company publishes the reports. We find the committee practically agreed that all opinions of courts of last resort should be published. The system of selecting certain cases for publication is not generally favored. In states where all decisions are required to be in writing and there is a selection of certain cases for publication in the official reports, private enterprise will publish a complete report and there will thereby be an unnecessary duplication in the publication of opinions. Furthermore, lawyers contend that there should be no discrimination in the publication of decisions; that each case is important to the parties interested; that all cases, like all men, are created equal and have equal rights, and that if no new principle of law is involved, a very short statement of the case and law applicable will suffice. Reference is sometimes made to the system which obtains in England as an argument in favor of selecting cases for publication, but the method now in vogue in England has resulted in the publication of four general series of English reports, each covering the same courts and reporting, to a considerable extent, the same cases, to wit: The Law Reports, Law Journal Reports,

Law Times Reports and Times Law Reports. It is very doubtful, accordingly, whether anything is gained thereby. Then, too, in the selection of cases, the question of the method of selection evokes a great divergency of views. Some favor the designation of opinions for publication by the courts which render them, but courts are human and such a plan is likely to result in an average publication of practically the same number of opinions from each judge without special reference to the importance of the case, or effect upon the body of the law. There seems to be no feasible plan of choosing a competent committee of lawyers for such selection. In some instances, the reporters would make admirable selections, but the reporters do not like to bear the burden of such a responsibility and, in some cases, the reporters are practically publication agents and not men learned in the law. For a great many reasons, therefore, the committee is practically agreed that all opinions of courts of last resort should be published.

In a way, many of the compilations of decisions from various courts are the practical response to the demand for selected cases. These are useful and highly regarded by many practising lawyers, so much so that the committee is strongly opposed to any recommendation that lawyers subscribe to only one set of standard reports, but is of the opinion that that question must be left to the lawyers themselves, who will, so far as their ability will permit, take advantage of the benefit of such publications, but hardly any lawyer would be satisfied to rely solely upon such publications. The more active in the practice the more the lawyer desires to have access, if possible, to every case which has been decided wherein a principle of law is announced that applies to the case he has in hand. Where the court records are open to the inspection of the public, as they must be, no law or rule against the publication of all opinions rendered can be made effective, and the volume of reported cases cannot be restricted in this way.

There is a difference of opinion as to whether our courts should pay more or less attention to the authority of decided cases. Some feel that the criticism of courts is at least partly caused by their tendency to try to do justice in the particular case instead of following precedents, while others feel that they have not gone far enough in this direction to meet the demands of modern times. It is suggested that the case system of legal education is respon-

sible for the eager search for a precedent in point, and when, in the course of time, lawyers thus trained become judges of courts of last resort, the opinions will reflect more and more a "hide-bound" adherence to precedent, while others express the view that the result will be a keener analysis and broader horizon tending to develop a more discerning use of precedents because of a better understanding of them.

These are some of the problems encountered by your committee in the performance of the duty devolved upon us.

Now, as to the remedies, this committee is of the opinion that in the effort to shorten opinions the lawyers must assist the courts by shortening their briefs. Only issues necessarily involved should be raised and briefed, and the points suggested and argued in the most concise manner. Such briefs will materially aid the courts in writing better and shorter opinions, and the courts should be respectfully requested and urged to give this matter careful consideration in the preparation of opinions. The courts now have it in their power to apply the remedy of more concise expression. This discussion and agitation should be kept up by a Standing Committee of this Association and by appeals to the lawyers, and particularly to the courts, through local and state associations.

It may not be possible to refer the matter of divergency in constitutional and statutory provisions to the Commission on Uniform Laws, but this Association, through its Standing Committee or otherwise, and every state and local association, should be constantly endeavoring to bring about a uniformity of constitutional and statutory provisions as well as uniformity in the great body of the law as declared by the courts, so that the law of our whole country may be as nearly uniform as possible. This is demanded by patriotic as well as professional motives.

The official state reports should embody all decisions of courts of last resort, and none others should be published, except possibly opinions of some courts of statewide jurisdiction, as, for example, the Supreme Court of New York and the Supreme Court and Court of Chancery of New Jersey. In this way, there will be no necessity for subscribing to unofficial as well as official reports, particularly if the official reports are published expeditiously. The Federal Reporter should contain all the written opinions of

the United States Circuit Court of Appeals, and, as far as possible, should contain only the written opinions of the District Courts in cases which are not appealed. The Circuit Court of Appeals Reports should then be discontinued, thus obviating the duplication in publishing the opinions of the Circuit Court of Appeals. The United States Supreme Court Reports are generally praised, although suggestions are made with reference to shortening the statement of facts and simplifying the language used in some cases decided by that great tribunal.

We recommend that continued and unceasing effort be made, based upon the data embodied in this report, to accomplish something definite along the lines herein indicated.

Respectfully submitted,

THOMAS H. REYNOLDS,
B. P. CRUM,
ROYAL A. GUNNISON,
JOHN MASON ROSS,
JACOB TRIEBER,
BRADNER W. LEE,
DANIEL B. ELLIS,
GEORGE D. WATROUS,
HERBERT H. WARD,
CHARLES C. TUCKER,
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ORVILLE A. PARK,
DAVID L. WITHINGTON,
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SIGMUND ZEISLER,
CHARLES W. MOORES,
JAMES C. HUME,
WILLIAM OSMOND,
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THOMAS A. E. WEADOCK,
HENRY E. RANDALL,
LEROY PERCY,

JAMES A. WALSH,
FRANCIS A. BROGAN,
FRANK H. NORCROSS,
JOHN H. RIEDELL,
EDWARD Q. KEASBEY,
WILLIAM H. POPE,
CHARLES THADDEUS TERRY,
ALEXANDER B. ANDREWS, JR.,
ANDREW A. BRUCE,
DANIEL W. IDDINGS,
S. H. HARRIS,
WALTER P. LA ROCHE,
WILLIAM E. MIKELL,
EMELIO DEL TORO,
WILLIAM A. MORGAN,
L. D. LIDE,
CHARLES S. WHITING,
THOMAS W. STEGER,
WILLIAM H. BURGESS,
WILSON I. SNYDER,
MARVELLE C. WEBBER,
ROBERT M. HUGHES,
GEORGE DONWORTH,
JAMES W. VANDERVORT,
CLAIRE B. BIRD,
RODERICK N. MATSON.

DIGEST OF CORRESPONDENCE.

EXHIBIT A.

ALABAMA.

Constitutional provisions: None.

Statutes: The justices of Supreme Court shall not be required to write opinions in cases where decisions merely reaffirm previous decisions or relate to questions of fact only, or when the cases decided would, in their opinion, serve no useful purpose as precedents, and they must direct what decisions shall be published, but the title of every case decided by them and not reported in full shall be published in the reports with brief note of the points decided and with reference to the authorities. The report must contain the name of the judge before whom the case was tried, the names of the attorneys for appellant and appellee, and the names of the justice who wrote the opinion and of those concurring, but shall not contain a table of cases cited in that volume, nor the briefs of counsel.

The reporter is a salaried officer. Provision is made as to details of publication of reports. The opinions must be published within three months after determination of the case unless longer time is necessary to accumulate a sufficient number of opinions to make a volume.

Suggestions: Lawyers want every case they win reported whether it involves any new point or not. They present every point involved whether new or not, and complain on rehearing if it is not discussed. The opinions of courts of last resort are too lengthy. They ought, if possible, to be shortened. The court ought to be the judge of the decisions to be published at length. It is not advisable to do away with official publication of state reports and to permit private enterprise to supply reports.

I believe it possible, and the only feasible plan, to refer the matter to the Commission on Uniform Laws.

ALASKA.

Constitutional provisions: None.

Statutes: None.

We have too much case law in this country. The average lawyer, instead of doing the original thinking for reasons upon which to base his contention, is so desirous of winning his suit he spends the greater portion of his time looking for some similar case in the hope that it may be accepted as a precedent. The average court renders long decisions more to justify the decision made than for the purpose of aiding the community.

ARIZONA.

Constitutional provisions: Speedy publication of opinions is to be provided for by statute. All opinions are to be free for publication by any person.

Statutes: The opinion of the Supreme Court must be rendered in writing, filed with, and recorded by, the clerk of the Supreme Court. The decisions of the Supreme Court shall be published, including brief abstract of cases, briefs of counsel, if necessary, with notes of the points decided, by the reporter, who may contract for publication and sale thereof.

Digests: A uniform system of digesting should be made universal. The American Digest System is the one to be preferred.

Opinions: Their undue length and the inclusion of the dissenting opinions are the greatest evils. There are also too many opinions published.

Reports: The publication of the official reports should not be discontinued. The recommendation of the purchase of one standard set of reports is not advisable.

Selected Cases: Only such opinions as have been selected by the courts should be published.

ARKANSAS.

Constitutional provisions: None.

Statutes: None.

Commission on Uniform Laws: The matter under consideration should not be referred to this commission.

Opinions: In this state there are no serious defects, except the failure of the court to exercise its discretion as to which opinions shall be published. Generally, the greatest defect in the opinions of some courts is their undue length. They should be cut down by shortening the statement of facts and citation of authorities. The courts should determine which opinions shall be published officially.

Reports: There can be no objection to the duplication of reports. The lawyer should buy only those which he desires. The publication of official reports should be continued. The recommendation of a standard set of reports is not advisable. The American Bar Association should create a section of reporters to draw up a plan for some system, based on something similar to the Key Number System.

Selected Cases: This system should be adopted. The courts should select those which are to be published.

ATTEMPTED REFORM.

The problem of reform has been discussed in this country for over a century. In 1830 an eminent member of the Baltimore Bar called attention to the existing exorbitant number of reports. The difficulty

of reform in part results from our fundamental law. We are a nation for national purposes, and separate states with local option for all other purposes. We have a situation entirely different from that of any other nation. Elsewhere the courts, the publication of reports, the means of legal education, are all closely organized and united. (Mr. Bird, Wis.) Changes in the defects in our system can only be brought about by the cooperation of the lawyers and the courts. (Mr. Walsh, Mont.)

This committee should have the American Bar Association adopt resolutions asking the courts to reduce the number of opinions and to make them shorter. Rules of court tending to that end would also be effective, where possible, or the state constitutions and statutes should be amended, where necessary. (Messrs. Stockbridge, Md.; Brogan, Neb.) Much has been written in regard to the heedless facility with which opinions are written. Jurists have been urged to curtail the production of decisions. Reporters have been advised of the preferability of thoughtful selection and painstaking completeness in print'ng, and all without result. (Mr. Terry, N. Y.) Legislation can be had to effect brevity in the opinions. (Mr. Wolf, La.) In Idaho a reform was attempted at the last session of the legislature and failed. (Mr. Gough, Idaho.) The Massachusetts court has of late years tried to reduce the length of its opinions. (Mr. Swift, Mass.) It is hopeless to seek to improve the lawyers who try cases, and who brief them. (Mr. Moores, Ind.)

See, also, Opinions.

BRIEFS OF COUNSEL.

The attorneys should be required to write shorter briefs. (Mr. Gough, Idaho.) No opinion of any court other than a court of last resort should be cited in the briefs. (Mr. La Roche, Ore.) The briefs of counsel are of unnecessary length, because they cite long lists of cases to support elementary principles of law. (Mr. Walsh, Mont.) The reform should undoubtedly come in the briefs of counsel. (Mr. Norcross, Nev.) It is much easier to prepare a long discursive brief than to make one that comes right down to the point. This possibly might be cured by court rules. (Mr. Webber, Vt.) Many of the reporters pad the reports by inserting briefs of counsel or part of them. There may be instances in which such a method is helpful, but they are few. (Mr. Trieber, Ark.)

The Michigan courts years ago stopped the practice of printing briefs of counsel, thereby shortening the length of the opinions. (Mr. Weadock, Mich.)

See, also, Opinions.

CALIFORNIA.

Constitutional provisions: All decisions of the Supreme Court, in banc or departments, shall be given in writing, and the grounds of the decision shall be stated.

The legislature shall provide for the speedy publication of such opinions of the Supreme Court and of the District Courts of Appeal as the Supreme Court may deem expedient, and all opinions shall be free for publication by any person. Said court may also appoint a reporter, and not more than three assistant reporters.

Statutes: The statutes also require all decisions of the Supreme Court to be given in writing and to state the grounds of the decisions. In appealed cases the Supreme Court may direct the proper judgment to be entered or a new trial. If a new trial is granted the court shall pass upon and determine all the questions of law involved in the case, presented on appeal, and necessary to the final determination of the case. The court may direct the manner and form of the report, but may not in any manner alter the written opinion as to substance, argument or authority cited, or omit any portion of the opinion as filed. All opinions filed must be printed in full in the law reports. The reports must be published in well-bound volumes under the supervision of the court and reporter, by contract for a period of five years at a time.

COLORADO.

Constitutional provisions: "The Supreme Court shall give its opinion upon important questions when required by the Governor, the Senate or the House, and all such opinions shall be published in connection with the reported decision of said court."

Statutes: The opinions of the Supreme Court shall be published and that court is authorized to appoint a reporter of its decisions.

Commission on Uniform Laws: The matter under consideration should not be recommended to this commission.

Digests: No system recommended.

Opinions: The opinions are too long. Those which decide no new principles of law should be shortened or eliminated from the published reports.

Reports: The publication of official reports should be continued.

Selected Cases: All opinions should be published.

COMMISSION ON UNIFORM LAWS.

As to whether the matter under consideration could advantageously be referred to this commission, the following have replied in the negative: (Messrs. Trieber, Ark.; Ellis, Colo.; Watrous, Conn.; Bird, Wis.; Burges, Tex.); and the following have indicated that it might possibly be referred but doubt as to any gain thereby: (Messrs. Gough, Idaho; Grinnell, Mass.; Iddings, Ohio; Del Toro, Porto Rico; Whiting, S. D.; Morgan, R. I.; Webber, Vt.). Other members of this committee think this should be handled by a committee of this Association.

CONNECTICUT.

Constitutional provisions: None.

Statutes: Reports of cases prepared by reporter shall be published under the supervision of the comptroller.

Commission on Uniform Laws: The matter under consideration should not be recommended to this commission.

Digests: As to the selection of a uniform system of digesting, the American Digest System is recommended as being preferable to any other.

Opinions: The opinions should be shortened, principally by omitting the quotations from other cases. Pressure should be brought to bear on the judges to accomplish this end.

Reports: The publication of the official reports should not be abolished. The purchase of one standard set of reports should not be recommended.

Statute Digests: It would be difficult to adopt a uniform system because of the existence of purely local statutes.

DIGESTS.

Uniform System: The consensus of opinion is that there should be such a system. (Messrs. Pelham, Ala.; Ross, Ariz.; Ellis, Colo.; Watrous, Conn.; Tucker, D. C.; Gough, Idaho; Hume, Iowa; Osmond, Kans.; Wolf, La.; Walsh, Mont.; Bruce, N. D.; Iddings, Ohio; Del Toro, Porto Rico; Morgan, R. I.; Whiting, S. D.; Snyder, Utah; Webber, Vt.; Bird, Wis.) This may best be obtained by the adoption of some one system.

The American Digest System is preferable and should be recommended for adoption (Messrs. Ross, Ariz.; Watrous, Conn.; Tucker, D. C.; Gough, Idaho; Osmond, Kans.; Wolf, La.; Iddings, Ohio; Morgan, R. I.; Whiting, S. D.; Webber, Vt.; Bird, Wis.), or the problem of digesting should be left to private enterprise (Messrs. Ellis, Colo.; Whiting, S. D.), or this committee or the American Bar Association should recommend some system (Messrs. Tucker, D. C.; Hume, Iowa; Iddings, Ohio); it cannot be done by law or rules of court. (Mr. Walsh, Mont.)

DISSENTING OPINIONS.

See Opinions.

DELAWARE.

Constitutional provisions: None.

Statutes: Associate judge from Kent County reports decisions of all law courts, and chancellor reports equity decisions.

Suggestions: Delay in publication of decisions unavoidable on account of lack of material from small states. All opinions should be reported. Think uniformity of digesting statutes impracticable and

useless if practicable. There should be an authoritative publication of judicial decisions. Full discussion in application of even well known principles to unusual facts is desirable. Reference to case nearest "on all fours" to case at bar is likely to get decision. Conscientious effort to perfect legal principles is hardly consistent with engagement of lawyer when he accepts a retainer in a case. Law is a growing science and technicalities sooner or later yield to hammering and a step forward is made.

DISTRICT OF COLUMBIA.

Constitutional provisions: None.

Statutes: "Require the reporter to print and publish the reports of the cases adjudged by the court under its direction and supervision."

Suggestions: For decreasing the volume of reported cases, "for the reporters under supervision or direction of the court to omit full reports of cases containing no new announcement of the law." "But in order to minimize the possibility of error in the selection of such cases by the reporter, he should be required to include in his volume of printed reports syllabi of all cases not reported in full. If this were done and the court were required to write and file all its opinions, lawyers would then have access to briefs, records and opinions of all cases not reported in *extenso*, and would be guided to them by the syllabi of such cases contained in the printed volumes of reports."

For uniformity of plan and classification, the adoption of the classification used by the West Publishing Co.

FLORIDA.

Constitutional provisions: The decisions are to be free for publication by any person. Judgments are not to take effect until the decisions are filed with the clerk of the Supreme Court.

Statutes: Syllabi for decisions are to be prepared by the justice delivering the opinion, which are to be filed with the opinion and published in the reports in lieu of the ones prepared by the reporter. The decisions are to be filed with the clerk of the Supreme Court, who must furnish certified copies thereof to any person on payment of the proper fees. The Attorney-General is required to report all decisions of the Supreme Court which are sanctioned by a majority of the judges.

GEORGIA.

Constitutional provisions: None.

Statutes: The decisions must be preceded by written synopsis of the points decided. They must not be published in the reports until after revision by each of the judges presiding in the case. The reports are not to contain arguments or briefs of counsel, beyond a statement

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of the points and authorities. The Supreme Court reporter is required to publish the decisions. The judges of the Supreme Court may direct the reporter not to publish in full such cases as they think can be understood from syllabi written by them, and in such cases syllabi only shall be published.

HAWAII.

Constitutional provisions: None.

Statutes: None.

IDAHO.

Constitutional provisions: None mentioned.

Statutes: "Statutory provisions govern in Idaho as to written decisions and the publication thereof."

Suggestions: Shorter briefs on the part of the Bar, shorter opinions by the courts and memorandum opinions in cases where no new principle is established nor new application of an old one.

Commission on Uniform Laws: The matters under consideration might be referred to this commission, but quicker results may be reached by this committee.

Digests: A uniform system should be adopted. The American Digest System is the best.

Opinions: The excessive length of opinions is the most serious defect to be contended with. The reform must begin with the lawyers and judges. To this end a nation-wide campaign should be carried on. More judges to help in the work would tend to the desired end. The attorneys should write shorter briefs.

Reports: The official reports should be continued. They should be printed in smaller type and on thinner paper.

The reporter system is good, but too expensive. If reduced in price it would probably supersede all others.

The recommendation of the purchase of one standard set of reports should not be advised.

Selected Cases: This system is not looked on with favor. All decisions should be published.

ILLINOIS.

Constitutional provisions: None.

Statutes: "Every final decision of each appellate court shall be reduced to writing by the court, and it shall be the duty of the court to designate which of such written decisions shall be published in full and which published by including an adequate abstract of such written decisions, but if any appellate court of this state shall fail to so designate within ten days from the date of the expiration of the time for rehearing, then such decision shall be printed only in con-

densed form or by abstract: Provided, that should any appellate court fail to so designate, then any such decisions may be published in full by any official publisher if the total number of volumes of appellate court reports published or to be published in any calendar year shall not exceed six volumes."

"Any official publisher shall carefully prepare and cause to be printed in connection with each decision so ordered to be published a full syllabus of the points decided by said decisions, and shall also prepare and cause to be printed in each volume a full alphabetical index of the cases therein reported, preliminary announcement of similar character and extent to those now included in reports known as Illinois Appellate Court Reports, and a full and complete topical index of all points of law covered by decisions therein reported."

Suggestions: The length of opinions is largely due to long quotations, thus repeating what has already been said. The judge should formulate the principle of law extracted from former opinions and applicable to case in hand. In cases where no new point is decided or no novel application made, a short memorandum opinion only should be written, as is frequently done in Supreme Court of the United States.

No one seems to have any remedy for duplication of published reports. I would be glad to see all official publication of state reports abandoned, but find no unanimity of opinion on this subject. I doubt if the matters can well be referred to the Commission on Uniform Laws.

I know of no system of digesting which on the whole would be preferable to the system adopted in the digests gotten up by the West Publishing Co.

The remedy for the evil of lengthy opinions is agitation among the lawyers. If they insist on shorter opinions and make their insistence known to the judges, the opinions will be shortened. Resolutions should be passed by this Association and by the state Bar associations, and the resolutions presented to the appellate courts.

INDIANA.

Constitutional provisions: "Decisions in writing. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case and the decision of the court thereon."

Publication of Decisions: "The general assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court made under this constitution; but no judge shall be allowed to report such decisions."

Statutes: Provide "That it shall be the duty of the reporter of the Supreme Court to receive all opinions of the Supreme Court which by this act are required to be published that shall be unpublished at

the time of his taking such office, and that are decided during his term of office, within six months after the close of the term at which such decisions are rendered. Whenever the opinions thus prepared for publication shall make a volume of 700 pages, as near as may be, the reporter shall prefix a table of cases reported therein, and a like table of cases cited by the court, after the manner of such tables in the recent volumes of the reports, also a table of statutes construed with the pages where construed; add an index thereto and superintend the printing and binding thereof, and see that the same are properly done. The index and table of cases shall be subject to the supervision and direction of the Supreme Court, the several judges of which shall be furnished the proof sheets as reports are being printed."

That "When, in said appellate court, an opinion is filed which is to be reported, such opinion shall be published in manner and form as the reports of the Supreme Court are now or may hereafter be published, and the reporter shall perform the duties required by virtue of this act as a part of his official duties, the same as now or hereafter required of him by the law in relation to his duties in connection with the Supreme Court reports, and the index and table of cases of the appellate court reports shall be subject to the supervision and direction of the appellate court, the judges of which shall be furnished the proof sheets as reports are being printed, and such reports shall be called the Appellate Court Reports: Provided, That said appellate court shall decide what opinions shall be reported and published, and said reporter shall be bound by such decision."

Suggestions: Nothing can be done in Indiana until the constitution is changed.

IOWA.

Constitutional provisions: None.

Statutes: Written opinions are required, and the selection of cases for publication is left to the discretion of the judge.

Digests: There should be a uniform system. This committee should select a system and recommend it to the publishers.

Opinions: The most serious defect is in the opinions themselves, *i. e.*, the unwise depreciation of the rule of *stare decisis*, the undermining of established principles, the evasion of precedents, the partial and partisan presentment of the facts, the lack of accuracy in statements, and the crudity of composition.

As to the undue length of the opinions, there is no complaint in this state. Their length is a matter of discretion with the judges.

Reports: The official reports should be retained.

As to the duplication of reports, the present system is fairly good and no complaint can be made.

The publication of the reports in this state is satisfactorily done.

The purchase of one standard set of reports should not be recommended.

Selected Cases: The selection of opinions for publication should be favored. This selection should be made by a committee in each state.

Statute Digests: Nothing recommended.

JUDGES, COOPERATION OF.

The reform in writing and publishing decisions must begin with the lawyers and the judges. (Messrs. Pelham, Ala.; Gunnison, Alaska; Gough, Idaho; Zeisler, Ill.; Moores, Ind.; Weadock, Mich.; Walsh, Mont.; Terry, N. Y.; La Roche, Ore.; Donworth, Wash.; Webber, Vt.) The only practical way is to keep the subject before the American Bar Association in the hope that by moral suasion the judges may be induced to write shorter opinions. (Mr. Weadock, Mich.; Mr. Zeisler, Ill.)

See, also, Opinions.

KANSAS.

Constitutional provisions: None.

Statutes: The justices of the Supreme Court are required to prepare and deliver to the reporter full notes of all decisions which they deem of sufficient importance to be published. The reporter is required to prepare such decisions for publication. They shall contain the title, syllabi, statement of facts necessary to understand the decision, briefs of counsel, or abstracts thereof, names of counsel, and the decision of the court; advance sheets may be prepared by the directors of the state library.

Digests: The American Digest System should be followed to bring about uniformity.

Opinions: All opinions should be published.

The opinions are too long. There should be more condensation. The remedy lies with the judges. They should be taught how to write opinions.

KENTUCKY.

Constitutional provisions: None.

Statutes: "Require the judges of our court of appeals to write opinions in all cases." All opinions to be prepared for publication in the Kentucky Reports, under the supervision of the court and subject to such rules and regulations as it may make.

Suggestions: A committee for the selection of cases to be published.

The most serious defect in this state is the publication of all opinions, important and unimportant. A bill is now before the legislature providing that the court shall select all opinions to be published, and that the unpublished opinions shall not be cited in any court in the state as an authority in any pending case, and that the publication of discarded opinions shall be prohibited.

LOUISIANA.

Constitutional provisions: None mentioned.

Statutes: Provide that opinions of the Supreme Court shall be in writing and provide for their publication.

Suggestions: A statute providing that "Appellate courts in deciding cases coming before them on appeal, shall not, in the reported opinion, at all discuss the testimony, but shall as concisely as possible state the ultimate facts which in the opinion of the court are established by the evidence, and to the facts so found shall apply the law, etc."

This would do away with a discussion at length of the evidence in cases coming up on appeal as distinguished from those coming up on writ of error, opinions in which latter class are seldom so lengthy as to cause any trouble.

Selection of cases does not offer a remedy; take, for example, the L. R. A. There is nothing to show that official selection would be better.

Moral pressure should be brought to bear on the courts to bring about shorter opinions.

There is no such thing as an ideal digest classification; the West Publishing Co.'s is as good as any.

MAINE.

Constitutional provisions: None.

Statutes: The reporter is required to prepare reports of legal questions argued, reporting the same more or less at length in his discretion. He is also required to publish rescripts of the law cases.

Suggestions: The principal criticism in this state has been as to the delay in publication of opinions. I can see no practical way of preventing the publication of voluminous compilations. I do not think private enterprise should be substituted for governmental agency in publication of state reports.

State Digests: I should approve of any practical recommendation that might make the statutes of other states more available. The difficulty of ascertaining the statutory law of other states even by searching in our best law libraries has been forcibly brought to my attention.

MARYLAND.

Constitutional provisions: None mentioned.

Statutes: Require a written opinion to be filed in every case argued or submitted. (Not necessarily reported.)

Suggestions: A request presented by the Bar Association to all the courts of last resort asking their cooperation for the benefit of the profession in curtailing the length of opinions, omitting therefrom lengthy citations, and requesting that each court appoint a committee from its number to designate what opinions should be reported.

MASSACHUSETTS.

Constitutional provisions: None.

Statutes: The full court, as soon as may be after the decision of a question, shall "make and enter a proper order, direction, judgment or decree for the further disposition of the case or cause a rescript containing a brief statement of the grounds and reasons of the decision to be filed therein," and "if no further opinion is written within sixty days the reporter shall publish the case with the opinion contained in such record or rescript."

Suggestions: Under this statute it has been customary to write opinions in most cases, so that the rescript is a purely formal document containing a mere statement of the result without reasons. The practice of writing opinions in practically all cases has been followed ever since 1859, when the statute above referred to was enacted. This practice has been in accordance with the general expectation and approval of the Bar hitherto, and the court deserves credit for the comparative brevity of its opinions. There is an obvious tendency now to reduce still further the volume of opinions.

In spite of their comparative brevity they are still too long.

Reports: The present system of reporting is fairly satisfactory. The official reports should be retained. There should be no recommendation as to the purchase of one standard set of reports.

Selected Cases: The decision in all cases before the Supreme Court should be published. In cases involving merely the discussion of the particular facts or the sufficiency of the evidence to warrant this or that result as a matter of law and involving no new legal principle or requiring no new explanation for the guidance of the Bar, it might be practicable to publish a very brief statement of the result and to file in the case, for the information of the parties, a fuller discussion of the facts or the evidence such as the court might naturally prepare as a basis for consultation in reaching its ultimate decision in the case.

Commission on Uniform Laws: These matters might be referred to this Commission and, in so far as legislation or constitutional change may be necessary in any state to enable the court to deal freely with this matter, such a reference might bring about important results. Where, however, the courts are now free, it is submitted that it is not a matter for uniform laws, but is a question of focusing the attention of the Bar with a view to securing such an expression of its judgment in favor of abbreviation as to convince the courts in all parts of the country that the Bar considers abbreviation feasible and essential.

Extract from Attorney-General's report for year ending Jan. 19, 1916:

"A serious problem now confronts the legal profession of the country, growing out of the multiplication of law reports. In our own state the reports of the decisions of the supreme judicial court of the commonwealth have now reached the two hundred and twenty-

second volume, and between four and five volumes are being added annually. . . . I feel that the court should be given an unlimited opportunity to decide cases without opinion in its discretion in all cases where it is apparent that the writing of an opinion would serve no substantial public purpose. Accordingly I recommend that the section of the Revised Laws referred to be amended so as to provide that if no opinion is written the reporter shall publish only a brief memorandum of the decision. . . . This will not only check the overgrowth of our law reports, but will remove an unnecessary burden from the judges of this court and give them more time to devote to the preparation of opinions in the remaining cases and to their other important public duties."

MICHIGAN.

Constitutional provisions: "Decisions of the Supreme Court, including all cases of *mandamus*, *quo warranto* and *certiorari*, shall be in writing with concise statement of facts and reasons for the decisions; and shall be signed by the justices concurring therein. Any justice dissenting shall give the reasons for such dissent in writing under his signature. All opinions shall be filed in the office of the clerk of the Supreme Court."

Statutes: Provide for publication, etc.

Suggestions: Moral pressure brought to bear on the courts.

Legislation to secure the speedy official publication of the reports.

Reduce the length of the opinions and omit publication when the law permits.

Prohibit all officers, having custody of opinions, from being financially interested, directly or indirectly, in any advance publication.

MINNESOTA.

Constitutional provisions: None mentioned.

Statutes: In all cases decided by the court a written opinion together with head notes to be filed with the clerk, the opinion to briefly state the points decided. A copy of such head notes shall be furnished by the clerk, without charge, to such of the daily newspapers as may desire them for free publication. Decisions may be rendered and judgments entered thereon in vacation as well as in term.

The reporter shall accurately report all cases, noting concisely the points decided, with a statement of the facts as shown by the record, unless the same are fully stated in the opinion; the names of counsel, with the points made and authorities cited as fully as he deems necessary; and the opinions rendered by the justices. All references in such opinions to former decisions of the court which have been published in *The Northwestern Reporter* shall also cite the volume and page of such reporter where the same appear; and, if the opinion

reported has been published in said reporter, the volume and page of such publication shall be cited.

Suggestions: Moral pressure brought to bear on the courts to compress statement of facts and to omit quotations and use in their place exact reference by page to the report where the case and point may be found.

MISSISSIPPI.

Constitutional provisions: None.

Statutes: In all cases settling important principles, in cases to be remanded, and in all cases where the judgment and the decree of the court below are reversed, the opinion of the Supreme Court shall be in writing, stating the reason upon which the decision is made, and the opinion shall be recorded by the clerk in a well-bound book to be kept for that purpose.

MISSOURI.

Constitutional provisions: The opinions of all the appellate courts in each case must be in writing. They must be filed in the cases and become parts of the record.

Statutes: The opinions must be in writing and filed in each case, and must be accompanied by a sufficient statement of the case. Act March 22, 1915, provides for a commission for the Supreme Court, consisting of the judges and commissioners thereof, and a commission for each of the courts of appeals, consisting of the judges thereof, who shall, for their courts respectively, designate what opinions of each of said courts shall be published in the official reports, and who shall supervise the preparation of the syllabi of the opinions, each commission to act for its own court only. These commissions shall select from the written opinions such as in their judgment will be for the benefit of jurisprudence, and designate the opinions so selected to be officially reported, and those not to be officially reported, and report the same to the clerks of their respective courts. They shall supervise, amend, and correct all syllabi prefixed to such published opinions. Sections 3918-3920, Missouri Statutes, 1909, relating to the publication of opinions of the courts of appeals are repealed.

MONTANA.

Constitutional provisions: The legislature may provide for the publication of decisions.

Statutes: The justices of the Supreme Court are to prepare their own opinions for publication.

Suggestions: As to reports, cooperation of the Bar and the courts to do away with long arguments in support of elementary principles.

As to digests, "The volume of the digest could be reduced by stating an elementary principle, or a principle or rule established by decisions, and then citing the cases in support of that rule or principle."

NEBRASKA.

Constitutional provisions: None as to opinions. But the constitution provides that the right to be heard in the Supreme Court shall never be denied. This has unfortunately led to the necessity of permitting the docket of the Supreme Court to be encumbered with a very large number of unimportant cases.

Statutes: The present statute provides that the Supreme Court shall cause to be reported with as much brevity as practicable each of its decisions which reverses or modifies the judgment of a district court, and also each other decision which determines or modifies any unsettled or new or important question, or gives construction to any provision of the constitution or of a statute not before construed, together with such other decisions as are deemed by the court to be of interest or importance.

Suggestions: The above statute was enacted, at the request of the Bar, in 1915, to remove some evils then existing. The former statute provided that the opinions of the court on all questions brought before them, and all dissenting opinions, should be written and filed. This provision of statute law, operating under a constitution which required the court to hear all cases of however slight importance or small amount involved, resulted in a large number of unnecessary and unimportant and valueless Supreme Court opinions. To meet this a statute was at one time enacted authorizing the court to determine what opinions should be officially reported, and what opinions should be treated as unofficial, not for publication. This led to confusion and inconvenience. The West Publishing Co. reported the unofficial cases, and they were afterwards published in separate volumes as "Unofficial Reports." They are now treated, although with some inconvenience, as part of the law of Nebraska.

The new statute has been in operation about a year. The result is very satisfactory to the Bench and to the Bar. The court now files opinions in about two-thirds of the decided cases. In the others no opinion is filed, but merely a memorandum decision referring, if need be, in so many words, to the authority of the previous cases on which the decision may be based. Moreover, in response to the hint contained in the statute of 1915, the opinions are shorter, and dissenting opinions less frequent.

NEW HAMPSHIRE.

Constitutional provisions: None.

Statutes: The justices of the Supreme Court shall file with the clerk thereof a written opinion in every case decided by them. Further provision is made for the appointment of a law reporter whose duties are defined. He is authorized to provide for the publication of the law reports. The justices are required to deliver to him copies of their opinions. In these statutes frequent reference is made to

"each case," which would warrant the inference that it is the reporter's duty to print each opinion delivered to him, and such has been the practice.

Digests: All digest systems are full of faults.

Opinions: There are no serious defects in connection with the publication of New Hampshire decisions. If any complaint has been made, it is that in some cases clearness has been sacrificed for brevity. Generally speaking, the opinions of the courts should be further condensed. It is impossible to frame a form for judicial opinions, as may be done for deeds, etc., but the following manner of writing an opinion might be of benefit: After a comprehensive statement of facts so that the application of the rule would be manifest, the opinion might proceed as follows: "The facts stated bring this case within the rule (stating it), announced in (citing the leading case), after full discussion, and affirmed in (citing later cases), which is now adhered to." As to discussion of questions involved, they should never be of greater length than necessary to give clear understanding of the grounds for decision. Of course, where new propositions are decided under statutes or otherwise, and new rules of procedure formulated, there must be a somewhat extended discussion thereof in the opinions.

All opinions of courts of last resort should be published, but those not involving new legal questions should be merely memorandum decisions.

Reports: The official reports should be continued. The recommendation of the purchase of one standard set of reports would not do any good.

Selected Cases: All opinions of courts of last resort should be published.

NEVADA.

Constitutional provisions: None requiring written opinions.

Statutes: "All opinions and decisions rendered by the Supreme Court shall be in writing, signed by the justices concurring therein, and shall be spread at large on the records of the court kept for that purpose." The statutes also provide for the publication of all decisions of the Supreme Court in bound volumes.

NEW JERSEY.

Constitutional provisions: There are none as to publication of reports, but on appeal in equity or writ of error, now called appeal at law, it is required that the reasons for the opinion of the court below be assigned in writing.

Statutes: An early statute of 1821 provided for the reporting of all such cases as shall be important and useful to be generally known or such as the reporter would think would tend to promulgate useful information among the citizens of this state.

The present statute, 1877, requires the chancellor and judges of the Supreme Court or Court of Appeals to file their opinions within 20 days with the clerk of the court, who shall make fair copies for the reporter. The judges, however, sometimes mark their conclusions "not to be reported," either because they consider them of no public interest, or because they involve private affairs which ought not to be published. This discretion is usually wisely exercised, but there are some cases in which cases involving new principles have not been reported in the state reports and have appeared in the *Atlantic Reporter*.

NEW MEXICO.

Constitutional provisions: None.

Statutes: None.

Suggestions: Where a statute is referred to it should be printed in full, because although it is nearly always possible to find a reported case, it is next to impossible to find an old statute; for the same reason quotations from other cases should be omitted with a bare reference to the page of the report where they may be found.

NEW YORK.

Constitutional provisions: The legislature "shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication."

Statutes: "The state reporter must report every cause determined in the Court of Appeals, which the court directs him, or which the public interest, in his judgment, requires him to report."

"The Supreme Court reporter must report every cause determined in the Appellate Division of the Supreme Court unless otherwise directed by the appellate court or a judge thereof."

"It shall be the duty of the miscellaneous reporter to report such opinions as public interest, in his judgment, requires, in cases decided in any court of record in this state other than the Appellate Division of the Supreme Court and the Court of Appeals."

Suggestions: "Strictly speaking, the preparation of a statement of facts should be one of the functions of the reporter, who should be aided by the court only in so far as the determination of a controverted question of fact was necessary to its decision."

Since the principle of freedom of the press would hardly permit statutory regulation of the printing of reports by unofficial reporters, the relief must come from the judges. They should, therefore, draft their decisions less fully and in a more orderly manner following some outline similar to the following:

1. A brief statement of the ultimate facts as a part of, or immediately following, the syllabus.
2. A statement of the rule of law.
3. The conclusion of the court.

Such a course would do away with the discussion of precedents intended to show that the rule as stated is the law of the jurisdiction, the historical discussion to show the development of that rule of law, the discussion of principles suggested by counsel, designed to show why they are not to be applied to the facts before the court, and the application of the law to the fact, none of which except in exceptional cases in any way concern a lawyer seeking an accurate and authoritative statement of the rule of law.

NORTH CAROLINA.

Constitutional provisions: None mentioned.

Statutes: None mentioned.

NORTH DAKOTA.

Constitutional provisions: "Where a judgment or decree is reversed or affirmed by the Supreme Court every point fairly arising upon the record of the case shall be considered and decided and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the Supreme Court, and preserved with a record of the case. Any judge dissenting therefrom may give the reasons for his dissent in writing over his signature."

Statutes: Provide that in suits in equity all the evidence offered shall be introduced subject to objection, whether competent and relevant or not, and that on appeal a trial *de novo* shall be had in the Supreme Court upon such record.

Suggestions: The appointment of commissions to "select the leading cases and those which really announce principles of law, discard those which are immaterial or merely cumulative, issue a new edition of the state reports which would only contain those which announce and discuss new principles, and perhaps for the courts in the future only to publish those which are important and announce new principles."

OKLAHOMA.

Constitutional provisions. The Supreme Court shall render a written opinion in each case within six months after said case shall have been submitted for decision. Sec. 5, Art. VII.

Statutes: "It shall be the duty of the judges of the Supreme Court to prepare and file with the papers of each case full notes of the opinion of the court upon questions of law arising in the case, within sixty days after the decision of the same," which shall be treated as part of the record in the case, and no mandate shall be sent to the court below until such opinion has been filed. The opinions of the Supreme Court and Criminal Court of Appeals are required to be published.

Suggestions: While there are some opinions that are too long, these exceptions do not furnish sufficient foundation for criticism or effort to dictate to all judges writing opinions. Only those opinions which deal with some proposition of law not well settled in the state should be published. Those not published should be arranged by title and number with brief digest note of points decided and state precedent followed.

OHIO.

Constitutional provisions: "The decisions in all cases in the Supreme Court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeal."

Statutes: The reporter to report such decisions of the Supreme Court as the court may designate and such opinions of any court of appeals as any such court may designate and any such opinions and decisions of any inferior court as may be designated by him and approved by the Chief Justice of the Supreme Court.

"The Supreme Court shall cause to be reported with as much brevity as practicable each of its decisions in disposing of a motion or otherwise, which determines or modifies an unsettled or new and important question of law in this state, or construction of a statute of ambiguous or doubtful import. In like manner the court shall cause to be reported such other of its decisions as it deems of public interest and importance."

"If practicable, he (reporter) may incorporate in the reports the points made and the authorities cited by counsel in briefs, but their arguments shall not be published unless the court so orders."

"The reporter shall edit, tabulate, index and publish all cases disposed of on the general docket of the Supreme Court, except cases dismissed for want of preparation, failure to file printed record or by consent of the parties."

Suggestions: That in every case decided, except in cases of affirmance by an equally divided court, the Supreme Court shall give a statement in writing of the facts and the decision to be filed in the office of the clerk of the Supreme Court, copies of any such certified by the clerk to be received in all the courts of the state. Provided that only such decisions shall be reported in full as determine or modify any theretofore unsettled or new and important question of law in this state, or that give construction to a statute of ambiguous or doubtful import, together with such other of its decisions as are deemed by the court of public interest and importance. This would considerably lessen the number of reports and could be put into effect by a committee of lawyers, of which committee the reporter of the Supreme Court should be *ex-officio* Secretary.

Require the attorneys to cite the official reports where a case has been reported in such reports.

"With reference to digesting and indexing, uniformity of system, or really one system or scheme, should not only prevail within each state as to the reports and digests of that state, and perhaps as to the statute and codes, but should prevail as well throughout the several states. The most complete and most used, therefore most nearly uniform already, is the American Digest and Reporter System classification scheme, which should be the general and basic scheme."

A special meeting of all the state reporters in connection with the next annual meeting of the American Bar Association for the purpose of forming a national organization.

Commission of Uniform Laws: The matters under consideration should be referred to this commission, but not at present.

Opinions: The duplication of opinions and their undue length are the most serious defects, which are remedied in Ohio by court rules providing for the publication of only such cases as are selected by the courts of appeals, which are to be as brief as possible. Another remedy suggested is that of digested or condensed opinions in the form of augmented syllabi with citation of authorities (see 1 Term Reports digested by Mr. Iddings).

Reports: Duplication of the publication of reports should be avoided by the designation by the American Bar Association of one particular set of reports for use.

The official reports should be continued by all means.

The use of a standard set of reports should be recommended by the American Bar Association, which should be the official reports, and one additional.

Selected Cases: The selection of cases for publication is recommended. This should be done by committee of the Bar, who should select only such as state new or interesting propositions.

OPINIONS.

Undue Length: It is the consensus of nearly all replies received that the opinions of the courts are too long, and that they should be shortened as much as possible.

Some of the causes of this undue length are: Legislative inaccuracy, which brings about unnecessary litigation (Mr. Bird, Wis.); a desire to fortify and explain the precedents laid down (Mr. Matson, Wyo.); the practice of the lawyers in contending for everything which gives the slightest chance for a reversal, and an insistence that all points raised be determined (Mr. Anderson, Ala.); unnecessary discussion of elementary principles (Mr. Walsh, Mont.); too great a volume of business, which induces lack of time necessary to the proper condensation of opinions (Mr. Norcross, Nev.); the facility with which long opinions may be rendered, owing to stenography and typewriters (Mr. Brogan, Neb.).

Generally, the opinions should be short, prefixed by the briefest possible statement of the case (Messrs. Ross, Ariz.; Trieber, Ark.;

Ellis, Colo.; Zeisler, Ill.; Trabue, Ky.; Wolf, La.; Stockbridge, Md.; Grinnell, Mass.; Weadock, Mich.; Walsh, Mont.; Pope, N. M.; Del Toro, Porto Rico; Snyder, Utah; Bird, Wis.). This is being done in some instances, and opinions are thereby rendered more valuable (Messrs. Trieber, Ark.; Swift, Mass.; Brogan, Neb.). For the other view, that generally speaking the opinions are not too long (Messrs. Percy, Miss.; Harris, Okla.).

The opinions should be confined to the statement of the necessary facts and a discussion of principles directly involved (Messrs. Trieber, Ark.; Keasbey, N. J.).

The reasons considered by the courts in considering questions of fact should be omitted (Mr. Terry, N. Y.), also the sources from whence the court has obtained its knowledge of the law (Mr. Terry, N. Y.). Long lists of authorities cited should not be included (Messrs. Trieber, Ark.; Walsh, Mont.; Terry, N. Y.), nor should there be included an historical review of the authorities, except when the case is one of first impression, or a change in economic conditions may cause the court to reverse itself (Mr. Terry, N. Y.). Questions of practice and procedure should be eliminated (Mr. Moores, Ind.). Quotations from other cases should be omitted (Messrs. Watrous, Conn.; Whiting, S. D.; Randall, Minn.; Pope, N. M.). Memorandum opinions should be handed down in cases which do not establish a new principle or apply an old one (Messrs. Gough, Idaho; Riedell, N. H.).

The legislature should not interfere with questions of practice. We should rely on flexible, simple court rules. This would materially reduce the number of decisions on practice questions (Mr. Bird, Wis.).

The tendency of most courts is to make the statement of facts too short as compared with the legal reasoning used in the opinion (Mr. Pope, N. M.).

The use of the abstract form is desirable, and many have been so published in Illinois (Mr. Zeisler, Ill.).

The dissenting opinions should be eliminated (Mr. Ross, Ariz.).

Decisions based on former decisions should be very brief, simply stating that the point was decided on the authority of such and such cases, as is sometimes done in the United States Supreme Court decisions (Messrs. Watrous, Conn.; Moores, Ind.; Lide, S. C.).

Decisions based on statutes would be sufficiently set forth by a statement that the case is controlled by statute, citing it (Mr. Snyder, Utah).

Statements of evidence should be entirely omitted, or cut down to the barest possible summary thereof sufficient to make the decision understandable (Messrs. Terry, N. Y.; Snyder, Utah).

There is no reason for the publication of opinions in cases where only well settled principles of law or questions of fact are involved (Mr. Trieber, Ark.). Opinions not restating old precedents in the state should be published in the state reports. Those not published in

full should be arranged by title and number in logical manner with brief digest notes of points decided, and state the precedents followed. Only those which deal with some proposition of law not well settled in the state should be published (Mr. Harris, Okla.). It might be possible to forbid the printing of opinions or parts thereof which merely follow earlier decisions, and opinions in misdemeanor cases, where no constitutional question is involved, and opinions which discuss merely questions of procedure (Mr. Moores, Ind.). Divorce cases should not be published where they involve matters of fact rather than questions of law, nor should certain classes of criminal cases, nor civil cases, where no new principles are involved, such as ordinary damage cases (Mr. Stockbridge, Md.).

The opinions may be shortened by having more judges to do the work and requiring the attorneys to write shorter briefs (Mr. Gough, Idaho).

A remedy for too lengthy opinions might be suggested to the judges by showing a comparison of the full reports of cases with the same cases properly condensed (Mr. Grinnell, Mass.). It is doubtful whether anything can be done with the judges of Connecticut touching the shortening of their opinions. I think they would say it is their constant effort to do so. It is possible such an appeal would result in further condensation (Mr. Watrous, Conn.). The length of the opinions may properly be left to the judgment of the courts (Mr. Hume, Iowa). A law limiting the discretion of judges in writing their opinions, or limiting the publication thereof, would be useless, since private enterprise would publish them as they saw fit. (Mr. Walsh, Mont.).

Digested or condensed opinions in the form of augmented syllabi with citation of authorities would be the proper remedy—see 1 Term Reports digested by Mr. Iddings. This defect is obviated in Ohio by court rule providing for publication of only such cases as are selected by the courts of appeals, to be as brief as possible (Mr. Iddings, Ohio).

The average court renders long opinions more for the purpose of justifying the decision than for aiding the community (Mr. Gunnison, Alaska). There is no perfect remedy for decreasing the size and the length of opinions. The increasing number of judicial decisions is merely one of the phenomena of which so many are in evidence, demonstrating the complexity of modern life (Mr. Donworth, Wash.).

The duplication of former opinions should be eliminated (Mr. Ellis, Colo.).

The remedy for the undue length of opinions seems to be in an expression by the Bar as a whole of its opinion thereon (Mr. Morgan, R. I.).

The main defect in opinions is in the lateness of their publication (Messrs. Bird, Wis.; Webber, Vt.).

Written Opinions: This matter is largely governed by the constitution or statutory provisions, which see under the various state

headings. Written opinions should not be done away with (Mr. Donworth, Wash.).

Syllabi: Syllabi only would be sufficient, where the questions involved relate only to a statute, a question of fact, or the application of an established principle (Mr. Donworth, Wash.). See further, as to the constitutional and statutory requirements for the writing of syllabi, or head notes by the courts, the various state titles.

Affirmances: Where the order or judgment is affirmed, an opinion should not be written unless the questions involved are deemed by the court to be of special importance. This is Supreme Court rule in Wisconsin (Mr. Bird, Wis.).

Statutory enactments may be necessary to prevent the publication of opinions other than those marked to be published (Mr. Harris, Okla.).

OREGON.

Constitutional provisions: "At the close of each term the judges shall file with the Secretary of the State concise written statements of decisions made at that term."

Statutes: Provide "That the decisions of the Supreme Court must be printed in full together with a concise syllabus and a statement of the case reported."

Suggestions: "To withhold from publication all opinions which relate purely to questions of fact."

"In opinions which turn partly upon the questions of fact and partly upon questions of law the court might edit the manuscript opinion with entire propriety, so that the published opinion would give the conclusion reached by the court on the questions of fact and discuss only the law arising therefrom."

"That every opinion which shall be published in the Pacific Reporter shall also be published in the Oregon Reports."

"That no opinion of any court other than a court of last resort should be cited in any brief in the Supreme Court of the state."

"That if any statute or rule limits the number of opinions to be published in the official volumes, it should contain a prohibition preventing the giving out of opinions for publication to others."

PENNSYLVANIA.

Constitutional provisions: None.

Statutes: Opinions are required to be in writing.

Suggestions: One of the serious defects of this state is the publication of opinions other than those of appellate courts. All opinions of courts of last resort should be published. I do not think it advisable to do away with publication of official state reports, nor to recommend that lawyers subscribe to only one set of standard reports. Uniformity of digesting might be obtained by the adoption of a standard system of digesting.

PORTO RICO.

Statutes: The statutes applicable to Porto Rico are peculiar to that country alone, and can be of no particular value in relation to the United States at large.

Commission on Uniform Laws: The matters under consideration should be recommended to this commission.

Digests: A uniform system of digesting should be accomplished. It might possibly be done in this way: Have every state in the union publish officially their decision in each case and have prepared for publication a compilation of all of these decisions, possibly under the direction of the Attorney-General of the United States, aided by eminent lawyers.

Opinions: As to the opinions in Porto Rico, there are no serious defects. Generally, however, opinions should be as short as possible. Only those opinions should be published which are selected by the Supreme Court.

Reports: The publication of official reports should probably be continued. The recommendation of the purchase of one standard set of reports is advisable.

Selected Cases: A system of selected cases should be adopted. The selection should be made by the courts rendering the opinions.

Publication: See Opinions; Reports.

REPORTS.

Duplication: There are no great objections to the duplication of reports by private enterprise or otherwise. (Messrs. Trieber, Ark.; Hume, Iowa; Grinnell, Mass.; Norcross, Nev.). Such duplication has value in some instances, if it is confined largely to annotations. (Mr. Bird, Wis.). The earlier publication of reports by the West Publishing Co. is advantageous to the lawyer. The reprinting of reports by the various sets of selected cases seems to be a question for the publishers of these sets. The lawyers need not purchase them unless they so desire. (Mr. Hume, Iowa.) We are being overrun with books, not only with reports of legal decisions, but with textbooks as well. (Mr. Anderson, Ala.).

Official Reports: The Official Reporter System should be retained (Messrs. Ross, Ariz.; Trieber, Ark.; Ellis, Colo.; Watrous, Conn.; Hume, Iowa; Grinnell, Mass.; Riedell, N. H.; Del Toro, Porto Rico; Iddings, Ohio; Morgan, R. I.; Webber, Vt.). The reports should be published officially or by private enterprise under control of the state and regarded as official (Messrs. Whiting, S. D.; Bird, Wis.). The official reports should be abolished eventually. The cases of each state should be grouped together in the National Reporters with consecutive paging for each state, so that volumes of each state's reports could be made up separately if desired (Mr. Bird, Wis.).

One Standard Set: The recommendation of the purchase of some one standard set of reports by this commission should not be made (Messrs. Trieber, Ark.; Ellis, Colo.; Watrous, Conn.; Gough, Idaho; Hume, Iowa; Grinnell, Mass.; Riedell, N. H.; Morgan, R. I.; Whiting, S. D.; Webber, Vt.; Bird, Wis.).

Such recommendation should be made, to consist of the official reports and one additional. The recommendation should be made by the American Bar Association (Messrs. Iddings, Ohio; Del Toro, Porto Rico).

National Reporter System: It would be advisable for the American Bar Association to create a section of reporters to draw up a plan for a uniform system of reports along the lines of the Key Number System (Mr. Trieber, Ark.). As to the National Reporter System, it would not be advisable to abolish other reports in favor of it (Mr. Ross, Ariz.). It would be wise, however, to have the price of the National Reporter System reduced so as to eliminate other publications (Mr. Gough, Idaho).

Miscellaneous: The average lawyer, if he wins a case, wants it reported, whether the opinion involves any new legal proposition or not (Mr. Anderson, Ala.). The matter of reducing the volume of reported cases is important, if for no other reason than to save shelf room (Mr. Trieber, Ark.).

All cases must be published (Messrs. Moores, Ind.; Burnett, Ky.; Swift, Mass.; Pope, N. M.; Norcross, Nev.; Mr. La Roche, Ore.).

In Iowa the power to limit or suppress the publication of Supreme Court opinions is vested in the court (Mr. Hume, Iowa).

If a statute or rule limits the number of opinions to be published in the official reports, it should also limit private publication to the same extent (Mr. La Roche, Ore.).

In Wyoming, which is a new state, there are few decisions, and hence the lawyers are frequently compelled to examine cases from other states, and they find the increasing volume of reports in the other states a great burden. Some relief must be had (Mr. Matson, Wyo.).

The Bar must have access to all opinions that really have an influence on the development of the law and which make an application of law to new arrangement of facts (Mr. Keasbey, N. J.).

The human mind is still so inaccurate that the law no doubt is rendered more certain by the existence of many reports than with an inadequate number. The case hunter, therefore, has some justification (Mr. Bird, Wis.).

Any attempt to persuade the West Publishing Co. to abridge the opinions which it reports would not be acceptable to the profession. So long as lengthy opinions are filed, I suppose this company will feel bound to print them as they stand, and most lawyers, after finding the case in point, would be disappointed if the opinion were not published in full (Mr. Watrous, Conn.).

RHODE ISLAND.

Constitutional provisions: None interfering with any plan to decrease the volume of the reports.

Statutes: Supreme Court has entire control of the writing and publishing of its reports. The reporter is required to report cases having written opinions and others deemed useful and important as ordered by the court.

Commission on Uniform Laws: The matters under consideration might possibly be referred to this commission, but the commission would find it difficult of solution.

Digests: The American Digest System is superior to all others.

Opinions: The undue length of opinions should be remedied by an expression thereon by the Bar.

Reports: The official reports should be retained.

The recommendation of the purchase of one standard set of reports should not be made.

Selected Cases: The publication of selected cases only is not recommended.

SELECTED CASES.

The publication of selected cases only is not to be advised (Messrs. Ellis, Colo.; Gough, Idaho; Wolf, La.; Grinnell, Mass.; Riedell, N. H.; Bruce, N. D.; Morgan, R. I.; Webber, Vt.; Bird, Wis.).

Only selected cases should be published (Messrs. Ross, Ariz.; Trieber, Ark.; Hume, Iowa; Iddings, Ohio; Harris, Okla.; Whiting, S. D.; Del Toro, Porto Rico). The selection should be made by the courts (Messrs. Ross, Ariz.; Hume, Iowa; Grinnell, Mass.; Iddings, Ohio; Webber, Vt.). These committees should be organized into one society. A body of experts would in time result therefrom (Mr. Hume, Iowa).

The average lawyer, especially if he wins a case, wants it reported, whether the opinion involves any new legal proposition or not, and there are judges who want their opinions published, although the majority of the other judges may think they should not be reported (Mr. Anderson, Ala.).

There are too many cases reported, but how to eliminate the useless ones without seriously impairing the usefulness of the reports presents a difficult problem for solution (Mr. Pelham, Ala.). Judges shrink from the ungracious task of criticising, passing upon, and suppressing each other's work; that they should be willing to do these things is more than we should reasonably expect from them (Mr. Hume, Iowa). It is easy to determine that some cases should not be reported, but there are many cases in which there is room for grave doubt, and there is danger in giving power of selection to any particular man or body of men unless qualified for the purpose. It is impracticable in most states to require the judges to form a commission to decide what cases shall be reported. They cannot always tell

what discussions tend to change the law, and are generally too busy to give the matter sufficient attention.

England has a council of law reporters living in London. It is doubtful if such a council could be formed in our states, or could afford to give the matter their time and attention (Mr. Keasbey, N. J.). The reporters are not always the men to whom the selection of cases for reporting can be entrusted. The selection should be made by some committee (Mr. Trieber, Ark.). In the older states it might be feasible to have a commission appointed to select cases for publication (Mr. Bruce, N. D.).

It might be advisable to select portions of the opinions for publication (Mr. Wolf, La.).

Mr. Norcross of Nevada would like to induce the publishers of the selected cases to change their system somewhat, so as to exclude such portions of the opinion as do not deal with the particular subject involved.

In South Carolina, until several years ago, only cases marked "to be reported" by the Supreme Court were published. This frequently compelled lawyers the expense of copy of the unreported decisions from the clerk. The rule now is to publish all cases, and the constitution so provides (Mr. Lide, S. C.).

If it was given to the appellate courts to select the cases which are of peculiar value and reject all others, it would lead to the cutting out of a vast number which have no special value (Mr. Whiting, S. D.). Such a course as was recently adopted in Missouri will utterly fail to reach the root of the difficulty. Lawyers will insist upon having access to the unreported cases on file (Mr. Donworth, Wash.). The practice of selecting cases was followed in Nebraska for a few years, was abandoned, and the reporter was ordered to publish the suppressed opinions in separate volumes (Mr. Brogan, Neb.). Any attempt to select cases will have as much diversity as we have in the cases themselves. The variance of human viewpoint, which results in conflicting opinions, will also result in conflicting ideas as to how much or how little should be published (Mr. Bird, Wis.).

SOUTH CAROLINA.

Constitutional provisions: Require the Supreme Court to consider and decide every point made and distinctly stated in the cause, and give the reason thereof concisely and briefly stated in writing, Art. V, Sec. 8, Const. 1895. Provision shall be made for the speedy publication of the decisions of the Supreme Court.

Statutes: None mentioned.

Suggestions: That the state courts follow the practice of the Supreme Court of the United States, where decisions are based solely upon some former case and simply state that the point has been decided on the authority of such and such a case. It is now the cus-

tom for the court to indicate on the back of each opinion that it is to be reported. Formerly only such cases as the court considered important were reported, but lawyers would go to the expense of getting copies of such unreported opinions, and the custom was changed.

SOUTH DAKOTA.

Constitutional provisions: Constitution would have to be amended before legislature could enact laws that would bring relief.

Statutes: The reporter is required to report all opinions. As to the contents, such as statements of facts, etc., it is left in the discretion of the reporter, largely.

Digests: There should be a uniform system of digesting which could be done by the law book companies. The American Digest System is recommended as being the best.

Opinions: The discretion left to the reporter in this state as to publication of opinions should be left to the court.

The opinions are too long. They should be cut down by omitting the quotations from other cases.

Reports: As to the duplication of reports, no remedy is offered.

The official reports should be published by the law book companies under the control of the state.

It would be of doubtful value to recommend the purchase of one standard set of reports.

Selected Cases: Every decision of the courts of last resort should be published, but if a case arises in which the questions involved have been covered by some former decision, such case should be published in brief.

Statute Digests: These should be made by experts in the employ of law book companies.

STATUTE DIGESTS.

This matter seems to have received little consideration. Mr. Whiting of South Dakota suggests that they should be made by the law book companies.

The arrangement of statutes seems to involve the classification of subjects under series of chapters and a logical subdivision of those subjects into articles and sections (Mr. Harris, Okla.). The ordinary legislator has not had the opportunity or time to study codes, and would not understand them if he had. So he lets well enough alone, and therefore the uniform law is voted down or pigeon-holed (Mr. Bruce, N. D.). Touching uniformity in state statutes, we have a serious problem in connection with the methods of the West Publishing Co. It is possible that they would accept the views of the American Bar Association. Revision of the statutes has been attempted in almost every state, but nearly all are merely new arrangements of the old, ambiguous and conflicting statutes. The new Kentucky Code is

no doubt scientifically correct, but, to the average lawyer, the most complicated piece of work ever exhibited under a book label. True simplicity consists in conforming to those things with which we are familiar (Mr. Harris, Okla.). Whenever there is a revision of codes, the American Bar Association should see to it that the digesting and indexing are done by some well-recognized expert in that line of work (Mr. Whiting, S. D.).

TENNESSEE.

Constitutional provisions: None.

Statutes: The reporter, generally an attorney, is required to report any written opinion of the Supreme Court in which any other points of law are decided than such as are settled in previously reported decisions, and also all opinions which the court may direct. He must prepare syllabi, give the names of judges, counsel, etc., participating, also the extracts from arguments of counsel from points, statutes, also brief synopsis of statement of facts if not sufficiently stated in opinion; also prepare an index.

TEXAS.

Constitutional provisions: None.

Statutes: The Supreme Court shall direct what cases shall be reported and published. Only the main propositions made in briefs and considered by the court, with authorities cited in support thereof, shall be incorporated in the report. The reporter shall obtain records of cases to be reported. He shall prepare under direction of the court such decisions with syllabi and statements when necessary and deliver the same to the printer. The above provisions apply to the courts of civil appeals.

Suggestions: The length of the opinion must be left to the judge writing it. All opinions should be reported and officially published. I want the official report of every opinion of an appellate court in this state and of the federal courts. As to other states, I am content with those issued by the West Publishing Co., or other trustworthy law publishing house. The best method of obtaining uniformity in digests would probably be to have the state statutes examined by this committee with recommendation of that system prevailing in the state which seems to be the best.

UTAH.

Constitutional provisions: "When a judgment or decree is reversed, modified or affirmed by the Supreme Court, the reasons therefore shall be stated concisely in writing, signed by the judges concurring, filed in the office of the clerk of the Supreme Court, and preserved with a record of the case. Any judge dissenting therefrom may give the reason for his dissent in writing over his signature."

Statutes: The decisions must be in writing.

Suggestions: Where a statute not requiring construction covers the case it should be sufficient to say, "This case is controlled by the statute —," citing it.

The statement of evidence in an opinion should be absolutely barred; the court should state the ultimate facts only, even where the case is tried *de novo* in the Supreme Court.

VERMONT.

Constitutional provisions: None.

Statutes: The judges are required to prepare and furnish to the reporter reports of the opinions by them severally given and to furnish the auditor of accounts a certificate that they have done so or were prevented by some unavoidable cause.

Commission on Uniform Laws: It is doubtful if it would do any good to recommend these matters to this commission.

Digests: A uniform system of digesting would be of great value. The American Digest System is the most valuable of any.

Opinions: The most serious defect in the publication of opinions is the lapse of time between the argument of a case and the publication of the opinion delivered thereon.

The length of opinions must be left largely to the discretion of the courts. The lawyers can help therein by appealing fewer cases, and by not raising useless points for determination on appeal, and by more thorough preparation in the *nisi prius* courts. It would be well, also, for the courts to dispose briefly of trivial questions presented to them. All opinions should be published.

Reports: As to the duplication of reports, it would be no easy matter to do away with it. The official reports should be continued. The purchase of one standard set of reports should not be recommended.

Selected Cases: All opinions should be published. If selected cases only are to be published, the courts are the best judges as to which shall be selected.

Statute Digests: Uniformity in digesting statutes is hardly possible of attainment.

VIRGINIA.

No report.

WASHINGTON.

Constitutional provisions: All opinions are required to be in writing and the grounds of the decision stated therein.

Suggestions: The increasing number of decisions is one of the phenomena indicating the complexity of modern life. It is yet to be demonstrated that we cannot get along better by use of reports containing all the decisions of courts of last resort than by attempting to

dam the stream at its source. A partial remedy would be to persuade the courts to cease writing essays when they decide cases.

WEST VIRGINIA.

Constitutional provisions: "When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point fairly arising upon the record of the case shall be considered and decided; and the reasons therefor shall be concisely stated in writing and preserved with the record of the case; and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case concurred in by three of the judges thereof, which shall be prefixed to the published report of the case."

Statutes: None mentioned.

WISCONSIN.

Constitutional provisions: None mentioned.

Statutes: Require an opinion in every case of reversal.

Commission on Uniform Laws: The matters under consideration should not be recommended to this commission.

Digests: The American Digest System is preferable to others.

Opinions: The most serious defect is the lateness of their publication.

The length of the opinions should depend on the subject-matter in each instance.

Reports: The duplication of the reports has value in some instances, if they are confined largely to annotations.

We should either have official reports or privately printed reports regarded as official. The official reports may, however, be abolished eventually. As published in the National Reporter System, instead of the present method used, it would be well to group the cases of each state together in each volume with consecutive paging for each state, so that, if required, volumes of each state's reports could be made up and published separately.

The recommendation of one standard set of reports should not be made.

Selected Cases: All cases of courts of last resort should be published.

WYOMING.

Constitutional provisions: None that would interfere with the regulation of printing reports or adoption of standard scheme of digesting.

Statutes: None mentioned.

Suggestions: This is a new state, and opinions are perhaps longer, as it is necessary to review authorities from other states. If the Association could bring about the use of some one system of reports it would furnish a great relief to the profession.

REPORT

OF THE

COMMITTEE ON UNIFORM JUDICIAL PROCEDURE.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

The Committee on Uniform Judicial Procedure respectfully reports:

The program of the Association being conducted by this committee having been thoroughly set forth in several previous reports and well understood, it is in order to say that the earnest advocacy of it is being pursued before legislative bodies, state Bar Associations and national commercial organizations, nearly all of which have formally endorsed it. The sentiment in favor of the modernization and uniformity of the procedure of the courts and of judicial procedure has crystallized into a fixed and organized campaign.

PROGRESS.

Since the last report the legislature of the State of Virginia unanimously vested in the Supreme Court of Appeals of that state the necessary power to prepare and put into effect a system of rules in place of the common law practice modified by statute that had been in vogue a hundred years. The court will, it is hoped, adopt the proposed new federal rules as soon as they are prepared under proper authority from Congress. The Bar Association of the State of Pennsylvania, as well as that of other states, passed resolutions wholly endorsing the American Bar Association's program, a copy of which is appended hereto.

The prediction is justified by assurances from the necessary Senators of a report within 30 days on the American Bar Association's bill vesting in the Supreme Court of the United States the same power over the procedure on the law side that it now has on the equity side. There are enough favorable votes in the Senate to insure its passage. It will be recalled that the Judiciary Committee of the House made a unanimous report two years

ago. It is sincerely hoped that before this report is submitted, the Senate will have been afforded an opportunity to vote on the bill.

THE PRACTICE CODE.

In compliance with a resolution adopted by the Association at the last convention appropriate objections and recommendations in the form of briefs and arguments were made to the Special Committee of the Senate that had under consideration the formulation of the "Judicial Code No. 2," and were by it, printed. The objectionable features of depriving the judge of the power of directing a verdict in suitable cases and of "summing up" the evidence were eliminated and the name changed to "Practice Code." The power of the Supreme Court remains the same as it was under Sec. 914 R. S. Inasmuch as the Bar Association's bill will correct that evil it was deemed expedient not to complicate it with the entire "Practice Code." This course was justified by the intelligent attention given to the latter by "The Committee to Suggest Remedies," of which Judge Wheeler is Chairman. There is little prospect of the passage of the entire proposed "Practice Code" at this session on account of the details involved. The form of the bill should receive the thoughtful consideration of the Bar Association, particularly with reference to the reduction of both time and expense of litigation and a change in the present system of court reporting.

For the purpose of quick access the form of the bill recommended by the Association is appended hereto.

THE JUDICIAL SECTION.

The progress made by the Judicial Section is stimulating a universal interest amongst the judges. Indications point to the largest conference at Chicago in its brief history. Its organization and activities have had much to do with the restoration of public confidence in the courts that is daily becoming more apparent. Opportunity is taken to impress upon the members of the Bar Association the importance of inducing the respective state legislatures to appropriate \$150 per annum for the travel expense of a judicial representative to the annual Conference of Judges. A large and representative attendance must be assured. *This is*

a small premium for a state to pay for insurance against conflicting judicial opinions.

Respectfully submitted,

THOMAS W. SHELTON,
WILLIAM HOWARD TAFT,
JACOB M. DICKINSON,
JOSEPH N. TEAL,
LAWRENCE MAXWELL.

APPENDIX A.

COPY OF PREAMBLE AND RESOLUTIONS PASSED AT THE TWENTY-FIRST ANNUAL MEETING OF THE PENNSYLVANIA BAR ASSOCIATION.

WHEREAS, The American Bar Association is making an earnest and organized effort to modernize and make uniform the procedure of the courts; and

WHEREAS, There is pending in the Sixty-third Congress a bill known as H. R. No. 133, intended to vest in the Supreme Court of the United States the power to formulate and put into effect a complete system of rules for the detail regulation of the federal district courts; and

WHEREAS, Such a system will prove a model that may be followed by the several states and thus bring about uniformity; and

WHEREAS, The Bar Association of the State of Pennsylvania is in entire sympathy with the American Bar Association's program, and it is desired to give expression to the same;

Be it Resolved, That the Bar Association of the State of Pennsylvania formally gives expression to its entire sympathy and approval of the American Bar Association's program, and does respectfully and earnestly request Congress to enact into law House Bill 133 at the earliest possible moment; and

Be it Resolved, That a special committee, to be composed of one member from each congressional district of this state, to be named by the President, is hereby created for the purpose of presenting these resolutions to the Congressmen and Senators of this state and to the President of the United States, and other-

wise to co-operate with the American Bar Association's Committee on Uniform Judicial Procedure in its campaign.

APPENDIX B.

SIXTY-FOURTH CONGRESS, 1ST SESSION. H. R. 7572.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 5, 1916.

Mr. Webb introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed:

A BILL

TO AUTHORIZE THE SUPREME COURT TO PRESCRIBE FORMS AND
RULES AND GENERALLY TO REGULATE PLEADING, PRO-
CEDURE, AND PRACTICE ON THE COMMON-LAW
SIDE OF THE FEDERAL COURTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court shall have the power to prescribe, from time to time and in any manner, the forms and manner of service of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice, and procedure to be used in all actions, motions, and proceedings at law of whatever nature by the district courts of the United States and the District of Columbia.

SEC. 2. That when and as the rules of court herein authorized shall be promulgated, all laws in conflict therewith shall be and become of no further force and effect.

REPORT

OF THE

COMMITTEE ON UNIFORM STATE LAWS.

(To be presented at the meeting of the American Bar Association, at Chicago, Illinois, August 30, 31, September 1, 1916.)

To the American Bar Association:

Your Committee on Uniform State Laws has the honor to report its work during the year last past as follows:

First: Your committee has assumed that it could not perform the task committed to it in adequate way unless and until it had clearly defined for itself the limitations of its duties. Accordingly, we have prescribed as the purposes of this committee and the ends which the Association wishes to attain by it as three in number, which may be briefly formulated as being:

(a) The drafting or shaping into uniformity those laws of the various states which in any important degree affect interstate interests, or the rights and remedies of citizens in their interstate transactions; and

(b) The presentation to the legislatures of the various states for enactment such drafts of uniform acts as may have been approved by your committee, after the utmost study and the most painstaking investigation which by possibility might be given to them; and

(c) To bring about by securing proper cooperation on the part of the Bench and Bar that uniformity of interpretation in judicial decisions without which uniformity of law would certainly fail of accomplishment.

With the initiation of laws on entirely new subjects, or the initiation of entirely new laws on old subjects, or, in a word, with laws of first impression, this committee has nothing whatever to do. It is exclusively the province of this committee to make uniform, so far as it may, the existing laws of the various states on subjects of interstate application. In view of the plethora of laws on almost every conceivable subject, and in view of the ever-increasing multiplication of laws, it is a matter of consider-

able satisfaction to your committee that its duty does not lie at all in the direction of promulgating new statutes.

It is not more laws that we need, but more uniform laws.

Confident of the importance of its task, and impressed with the dignity and responsibility of its office, your committee has patiently investigated, has widely examined data, has extensively availed itself of the experience of others, and has reached its conclusions only after it had, to the extent of its capacity, canvassed the whole available field. The drafts of acts, therefore, which your committee presents for your approval are the result of years of as painstaking labor as your committee and the Conference of Commissioners on Uniform State Laws, among whose membership many of the members of your committee are privileged to be numbered, have been able to devote to the task.

Second: Your committee submits as the justification for its presentation to you at this time for your consideration of three new Uniform Acts, the fact that these acts have been the subject of study, investigation, analysis and debate for periods varying from four to six years; and that during those periods members of your committee serving likewise on sub-committees of the Conference of Commissioners on Uniform State Laws have put the acts to the test of consideration and criticism by all those in the various states who have given particular attention to the subjects involved in the acts, and have canvassed the results of the actual application in statutory provisions of some or all of the features of these acts which are now brought to your attention, namely: the Uniform Land Registration Act, the Uniform Foreign Probate Act, and the Uniform Flag Law. If there had been other means or devices for a more thoroughgoing exercise of care, deliberation and patience in the formulation of these acts, other than those employed by your committee and the Conference of Commissioners on Uniform State Laws, resort would have been had to such means and devices, but, in the absence of them, the results of the labor are presented in the best form, and after the greatest care which your committee has been able to develop and exercise. In this connection, may your committee be permitted to give you the assurance that, in connection with these acts, what could be accomplished through the use of mature judgment, expe-

rience, conscientious effort and diligent application has been embodied in their construction.

To the end that these three Uniform Acts may have your thoroughgoing and deliberate attention, and in order that your conclusions with reference to them may be relieved of the unsatisfactoriness of hasty examination, the acts are annexed to this report, and marked, respectively, "Exhibit A," "Exhibit B" and "Exhibit C," and thus an opportunity for a two-months' examination of them afforded.

Third: It will be of interest to this Association to note that every state in the United States has recognized and approved the principle of uniformity of state laws.

Fourth: The adoption by the various states of the Uniform State Laws which we have proposed from time to time has been steady, continuous and increasingly enthusiastic. By way of illustration, reference may be had to the first three Uniform Acts approved by the Association, and the number of states which have adopted them respectively. They are the Negotiable Instruments Act, which has been adopted in 47 states; the Uniform Warehouse Receipts Act, which has been adopted in 30 states, and the Uniform Sales Act, which has been adopted in 14 states.

Fifth: For convenience of reference, and for purposes of record, we have annexed to our report and marked "Exhibit D" a schedule of all the Uniform Acts thus far approved by this Association, together with the names of the states which have adopted them, respectively. The further purpose which your committee is anxious to serve by this tabulation is that of calling to the attention of members of this Association the fact that in the jurisdictions of some of them the legislatures have not been sufficiently awakened to the desirability of putting the acts upon their statute books, and to stimulate, if possible, the members of the Association in such jurisdictions to efforts to secure their adoption by their law-making bodies.

Sixth: [Uniformity of Decision as Essential as Uniformity of Statute.] It must be borne in mind that while we are devoting our attention consistently and persistently to the proposition of securing uniformity of statutes on certain subjects throughout the United States, we must not overlook an equally important phase of uniformity of law. We must, coincidentally with our

efforts in behalf of uniformity of statute law, give attention to that body of law which, as distinguished from the statutory law, is referred to as "judge-made law." It is, of course, obvious that, from the point of view of the ultimate accomplishment of uniformity, mere uniformity of statute without uniformity of decision would be at the best but a half accomplishment. To the extent that uniform statutes in the various states are interpreted variously and differently by different courts, to just that extent the efforts at uniformity embodied in our statutes, put forth with so much study, debate and painstaking labor, are rendered abortive. May we submit to you that it is well within the province of this body, viewing state law as made up, as well of judge-made law as of statute law, to exercise the same kind of care, diligence and enthusiastic activity to influence judicial decisions into the channel of uniformity as it has heretofore for something like 25 years exercised to bring legislative determinations into the channel of uniformity?

We are, of course, at the outset of the contemplation of such an idea brought to a hesitating attitude because of the natural reluctance to make suggestions to judicial officers, even in so important, not to say vital, a matter. On the other hand, is this not a false and baseless timidity? Have we any right, in view of our duties, to allow this kind of conventional regard, justifiable, nay, even essential in other respects, to deter us from at least bringing to the knowledge of the courts the work of this Committee on Uniformity of State Laws, the purposes which it is our duty as such committee to subserve in behalf of our respective states, and in behalf of the American Bar Association, and the necessity of the cooperation of the Bench, if the work which we have in hand is to succeed in accomplishing, ultimately, uniformity in full measure?

Accordingly, your committee in cooperation with the Conference of Commissioners has addressed during the last two years communications to all of the courts of last resort and to some of the intermediate courts, calling their attention to the work which has been done, and which will continuously be done, in behalf of uniformity of laws, and emphasizing the desirability, not to say necessity, of uniformity of judicial decision if the work is to achieve its full accomplishment; and submitting to such courts

the provisions of the various Uniform State Laws requiring such interpretation and construction as shall promote the purpose of uniformity embodied in the acts. This branch of our work has produced most gratifying results. Not only have the courts been prompted to recognize the importance of the work, but they have also been enthusiastic to promote it by their decisions. This has perhaps been best illustrated by the case which went up to the United States Supreme Court from the State of Louisiana, and in which Associate Justice Hughes, writing the opinion for the Supreme Court, took occasion to remark upon the character of the work for uniformity of state laws, the necessity of interpreting those laws so as to promote the uniformity intended by them, and in so doing necessarily to avoid following decisions of the state courts based upon former law differing from the uniform law or pronouncing an interpretation of the Uniform Act at variance with its general purpose of uniformity. The decision of the Circuit Court of Appeals of Louisiana was accordingly reversed because of a failure to follow those canons of interpretation which the Uniform Act there under consideration required. The case is a notable example for the state courts and other jurisdictions to follow.

Seventh: [Judicial Cooperation and Approval.] When there be added, therefore, to the satisfaction exhibited on the part of the chief executives and the legislatures of the various states of the union in the work of this Committee on Uniform State Laws of the American Bar Association, the hearty approval of the various state Bar associations throughout the country, manifested in many substantial ways, including contribution to the general funds of the Conference of Commissioners, and to the work involved in securing the passage of Uniform Acts by the respective state legislatures, the discriminatory praise of the work by individuals in thesis and address—when there be added to these the very distinct and analytical commendation of the courts voiced in no uncertain terms by members of the Bench in different parts of the country, in the course of judicial opinions upon cases before them, involving our uniform laws, it may be said perhaps with reasonableness that the success of the movement is demonstrated.

Eighth: [Further Success Certain of Attainment.] The progress made by the American Bar Association through this Committee on Uniform State Laws, and the Conference of Commissioners on Uniform State Laws which grew out of the committee, in its 25 years of service has amply demonstrated, it may be said, to the satisfaction of every one who has given the matter serious investigation, that the work is beneficent in its results, that distinct advance has been made, that full accomplishment is only a question of time, that every step of progress along this line makes the next step easier, and that the force of the movement is cumulative. It is superficial and pointless to ask the question whether absolute uniformity is attainable. It is superficial because the movement for uniformity of law does not depend upon the answer to the question. The value of the movement rests upon the proposition that even partial uniformity is much better than none at all. The question is pointless because there is no way of answering it, except by actual trial. The trial made by this committee has, during its upwards of 25 years of existence, answered the question emphatically in the affirmative, and in the only way in which it can be answered. It cannot be answered by speculation, by discussion, by argument, or by debate. It can be answered only in practice.

Ninth: [Uniformity not Simply a Name but a Principle.] Uniformity is not simply a name, it is a principle, and a principle which is of the very essence of democracy, if we mean by democracy that state of society in which there is one law equable in its application to the rights of all men alike everywhere; and to achieve that ideal in matters which relate to interstate interests or transactions, there must be one law given to all the states, and such law must be secured either by federal enactment, involuntarily imposed, compulsory upon all states, irrespective of their particular desires, or it must be secured by voluntary uniform state enactment growing out of the deliberate initiative of each of such states. It is the latter alternative which we believe the wiser and the safer and the only one which is thoroughly consistent with democratic conception.

Tenth: If the achievement of these purposes be worthy the widespread sanction which has been given to it, then they are worthy of the cooperation of every member of the American Bar

Association, and, for a full measure of success, such cooperation is deemed indispensable. Accordingly, we of the committee having this matter committed to its special keeping urgently bespeak your hearty support, your thoroughgoing approval, and the contribution of your influence and counsel. Your voice in the deliberations of your state Bar associations, your favoring word in your state legislatures, and your professional efforts in connection with the cases which may arise in your practice, will be potent factors in the record of accomplishment.

Eleventh: At this time your committee asks your support in its recommendation of the adoption of the following resolution:

Resolved, That the Uniform Land Registration Act, the Uniform Foreign Probate Act, and the Uniform Flag Act, having been heretofore approved and recommended by the Conference of Commissioners on Uniform State Laws, be, and the same are, hereby approved by this body, and recommended to the legislatures of the various states for enactment into law.

All of which is respectfully submitted.

CHARLES THADDEUS TERRY, New York, New York.

FREDERICK G. BROMBERG, Mobile, Alabama.

GEORGE B. ROSE, Little Rock, Arkansas.

WALTER E. COE, Stamford, Connecticut.

JAMES M. SATTERFIELD, Dover, Delaware.

CHARLES W. NEEDHAM, Washington, District of Columbia.

WILLIAM A. BLOUNT, Pensacola, Florida.

JOS. HANSELL MERRILL, Thomasville, Georgia.

FREMONT WOOD, Boise, Idaho.

ERNST FREUND, Chicago, Illinois.

CHARLES W. SMITH, Topeka, Kansas.

EDMUND F. TRABUE, Louisville, Kentucky.

W. O. HART, New Orleans, Louisiana.

HENRY STOCKBRIDGE, Baltimore, Maryland.

SAMUEL WILLISTON, Cambridge, Massachusetts.

GEORGE W. EATES, Detroit, Michigan.

CORDENIO A. SEVERANCE, St. Paul, Minnesota.

A. T. STOVALL, Okolona, Mississippi.

EDWIN A. KRAUTHOFF, Kansas City, Missouri.

HENRY H. WILSON, Lincoln, Nebraska.

JOSEPH MADDEN, Keene, New Hampshire.

JOHN R. HARDIN, Newark, New Jersey.
J. CRAWFORD BIGGS, Raleigh, North Carolina.
A. V. CANNON, Cleveland, Ohio.
D. A. McDOUGAL, Sapulpa, Oklahoma.
THOMAS A. JENCKES, Providence, Rhode Island.
T. MOULTRIE MORDECAI, Charleston, South Carolina.
CHARLES C. TRABUE, Nashville, Tennessee.
HIRAM GLASS, Austin, Texas.
CHARLES R. HOLLINGSWORTH, Ogden, Utah.
CHARLES E. SHEPARD, Seattle, Washington.
CHARLES W. DILLON, Fayetteville, West Virginia.
EDWARD W. FROST, Milwaukee, Wisconsin.

Dated, June, 1916.

EXHIBIT A.

NOTE.

[The Uniform Land Registration Act, in the form following, was adopted, approved and recommended to the various states for adoption by the National Conference at its twenty-fifth annual meeting as shown by the votes and discussion printed in the minutes in this volume, pp. 56-64, 90, 94.]

AN ACT¹

TO PROVIDE FOR THE SETTLEMENT, REGISTRATION, TRANSFER, AND ASSURANCE OF TITLES TO LAND, AND TO ESTABLISH OR DESIGNATE COURTS OF LAND REGISTRATION, WITH JURISDICTION FOR SAID PURPOSES, AND TO MAKE UNIFORM THE LAWS OF THE STATES ENACTING THE SAME.

Be it enacted as follows:

PART I.

PRELIMINARY PROVISIONS.

SECTION 1. [Name of Act.] This act may be cited as the Uniform Land Registration Act.

¹ *Illinois and Colorado*: "An act concerning land titles." *Massachusetts and Washington*: "An act relating to the registration and confirmation of titles to land." *California*: "An act for the certification of land titles and the simplification of the transfer of real estate." *Minnesota*: "An act concerning the registration of lands and the title thereto in the State of Minnesota." *Mississippi, North Carolina and Ohio*: "An act to provide for the assurance and registration of land titles." *New York*: "An act in relation to registering titles to real property and facilitating and expediting its transfer." *Oregon*: "An act concerning land titles, creating the offices of registrars of titles, prescribing the duties of said offices, providing for the registration of title to real estate, prescribing the manner in which registration of title may be obtained and the rights accruing thereunder." *California and Colorado* are the only States in which the act has been attacked as unconstitutional on account of its title. In *Robinson vs. Kerrigan*, 151 Cal. 41 the court said: "The same criticism might be made of many acts on a general subject which have always been considered as valid. . . . If it were necessary to mention every subdivision of the general subject of an act in the title to the extent

SEC. 2. [Definitions.] Words and phrases used in this act are to be construed as follows:

(1) The words "voluntary transaction" mean all devises and all contractual or other acts or dealings, by any registered owner of any estate or interest in land with reference to such estate or interest, and to any statutory right or exemption claimed therein.

(2) The words "involuntary transaction" mean the transmission of registered land or any interest therein by descent, the rights of curtesy and dower, all equitable rights and claims, judicial proceedings or statutory liens or charges, the exercise of the right of eminent domain, the lien of delinquent taxes and levies, affecting registered land, or any interest therein.

(3) The phrase "writing, instrument, or record," means all transactions, whether voluntary or involuntary, as herein defined.

(4) The word "registrar" means the clerk of the court having jurisdiction of the cause within the county or city in which the land lies.

(5) The word "decree" means judgment, order, or decree.

(6) The word "appeal" means writ of error, supersedeas, or appeal.

here claimed, our statutes would present a somewhat ludicrous appearance. The statement of the subject in the title would generally occupy almost as much space as the act itself. Furthermore, if subjects, as intended by the Constitution, must be so minutely subdivided, it would be impracticable to enact any comprehensive law on any general subject, by reason of the necessity of dividing it into so many separate acts. The provision must receive, and it has received a more liberal construction." The title was therefore held sufficient. See also *People vs. Crissman*, 41 Colo. 450, holding *Colorado* title sufficient.

Registration of title has been employed in certain parts of Europe from time immemorial. The original act among English speaking peoples was prepared by Sir Robert Richard Torrens, not a lawyer but Collector of Customs at Port Adelaide, in South Australia. This act took effect in South Australia in 1858. Similar acts were adopted in Queensland in 1861, in Victoria, New South Wales and Tasmania in 1862, and in New Zealand in 1870. It then crossed the seas to British Columbia. They are generally known as "Torrens Acts." The system has spread throughout the Dominion of Canada and obtains in the Provinces of Manitoba, Saskatchewan and Alberta and in the Northwest territories and also in Nova Scotia and in parts of Ontario. In the United States it has been adopted by *Cal.* (Stats. 1897, pp. 138-167); *Colo.* (Laws 1903, pp. 311-352; Rev. Stats. 1908, pp. 334-355); *Ill.* (Laws 1897, pp. 141-165, 207-212, amended by Acts of 1907, 1909, 1910 and 1913); *Mass.* (Laws 1898, pp. 682-722, amended by Acts

(7) Except where the context requires a different construction, the word "court" means the court having jurisdiction for the settlement, registration, transfer and assurance of titles to lands in the county or city where the land lies.²

Sec. 3. [Purposes.] For the certain, cheaper, and more speedy settlement, registration, transfer and assurance of titles to land, there is hereby established a system of land title registration, having the following purposes in detail:

- (1) To establish or designate courts of land registration;
- (2) To provide for the appointment and duties of registrars of title;
- (3) To regulate proceedings to obtain registration of title;
- (4) To authorize the adjudication of title;
- (5) To prescribe the nature of certificates of title;
- (6) To provide for the registration of subsequent dealings with registered titles;
- (7) To regulate sundry proceedings after registration of title;
- (8) To determine the legal effects of registration of title;
- (9) To establish an assurance fund;
- (10) And to regulate the fees for registration of titles.

1899, 1900, 1903, 1904, 1905 and 1910); *Minn.* (General Laws 1901, pp. 348-378, amended 1903 and 1905); *Miss.* (Laws 1914); *N. Y.* (Laws 1908, Vol. 2, pp. 1247-1283, amended 1909 and 1910); *N. C.* (Acts 1913, pp. 147-159); *Ohio* (Constitution, Art. 2, Sec. 40, amendment of 1913; Laws 1913, pp. 914-960, amended 1914); *Oregon* (Gen. Laws 1901, pp. 438-467); *Wash.* (Session Laws 1907, pp. 693-738); *Hawaii* (Laws 1903, Act 56, pp. 273-328); *Philippine Is.* (Compilation Laws 1908, pp. 777-820). There have been a series of acts leading up to registration in England since 1862, culminating in the land transfer act of 1897. This act renders registration of titles compulsory in certain places by order of certain local authorities, and the whole of London county, and city has been placed under the compulsory order. The London land registry office is located in a building specially erected for its purposes at a cost of \$1,325,000. As to the constitutionality of such legislation in the United States see *Robinson vs. Kerrigan*, 151 Cal. 40; *People vs. Crissman*, 41 Colo. 450; *People vs. Simon*, 176 Ill. 165; *McMahon vs. Rowley*, 238 Ill. 31; *Brooke vs. Glos*, 243 Ill. 392; *Waugh vs. Glos*, 246 Ill. 604; *Tower vs. Glos*, 256 Ill. 121; *Tyler vs. Judges*, 175 Mass. 68; do. 179 U. S. 405; *State vs. Westfall*, 85 Minn. 437; *Nat'l Bond Co. vs. Hopkins*, 96 Minn. 119; *Peters vs. Duluth*, 119 Minn. 96; *American Land Co. vs. Zeiss*, 219 U. S. 47; *Hammond vs. Glos*, 250 Ill. 32.

² The definitions given in this section materially aid in reducing the length of the act. None of the State acts contain any definitions, but this feature obtains in the Australian and Canadian acts and is believed to be of value.

PART II.

COURTS OF LAND REGISTRATION.

SEC. 4. [Courts of Land Registration.] The ".....courts throughout those portions of the state specified in section 89 of this act, and in those portions of the state which shall so elect as provided in said section, are hereby constituted or designated courts of land registration for the purpose of the settlement, registration, transfer, and assurance of titles to lands within their respective jurisdictions.

Minn. §3379.

Miss. §1.

N. C. §1.

N. Y. §371.

Ohio §1.

Ore. §14.

Wash. §8.

SEC. 5. [Jurisdiction.] Such courts shall have exclusive, original, and general jurisdiction,* subject to the right of appeal hereinafter allowed.

* *Superior Court*: Cal., Ill., N. C., Wash. *District Court*: Colo. and Minn. *Chancery Court*: Miss. *Supreme Court*: N. Y. *Common Pleas Court*: Ohio. *Circuit Court*: Ore. *Land Court*: Mass. One of the crowning excellencies of the Mass. act is the establishment of a special court for registering titles. This has done much to make the Mass. act popular and effective. Wherever it is possible, administration of the act should be committed to a special court. It is only on account of the cost of conducting such a court that it is not suggested in this act. The Ohio act, sec. 1, provides: "In counties having three or more common pleas judges said judges may select one or more of their number who shall act as judge or judges in land registration cases and matters." This affords the best substitute for a special court.

* Jury trial is provided for by the acts of Mass., Miss., N. C. and New York. No jury trial is provided for by the acts of Cal., Colo., Ill., Minn., Ohio, Ore., and Washington. In *Peters vs. Duluth*, 119 Minn. 96, held: that *Torrens* laws have the general purpose to clear up and settle land titles, and are nothing more or less than an enlargement of remedy to quiet title. Hence there is no constitutional right to a jury trial in Minn. under Art. I, sec. 4, which says: "The right of trial by jury shall remain inviolate, and shall extend to all cases of law without regard to the amount in controversy." The court said: "There was no such right upon the ancient bill to remove cloud and quiet title, and it has been held in this State that the constitutional guaranty does not apply thereto. *Yanish vs. Pioneer Co.*, 64 Minn. 175." The provisions fixing the character of the proceedings *in rem* are vital and are found in all the acts in practically the same terms. As to the preparation of rules and forms, Cal. places this duty on the Attorney-General, State Controller and Secretary of State; Mass. on the Land Court; Minn. permits each court to adopt general forms. In New York each Registrar must provide a book of covenants, restrictions and forms. Sec. 408. In Ohio the Attorney-General is to prepare a uniform system of books and forms.

(1) Of all petitions* and proceedings for the registration of titles to lands,

(2) And of all transactions affecting registered titles to lands lying within their respective jurisdictions.

SEC. 6. [Powers.] Their powers shall include all the powers possessed by the (circuit and corporation) courts of the state, in law and equity, for the purpose of enforcing any of the provisions of this act.

SEC. 7. [Sessions.] They shall be open as courts of land registration, except on Sundays and legal holidays; and their process as such may be issued at any time, returnable as they may direct.

SEC. 8. [Mode of Trial.] The whole matter of law and fact* in any case shall be heard and determined by the court; provided, however, that, on the motion of any person interested, the court shall direct and frame an issue or issues to be tried by jury.

Cal. §14, 17, 110.

Colo. §5, 8, 23-6.

Ill. §15, 25.

Mass. §1, 9, 13, 48.

Minn. §3379, 3406, 3388.

Miss. §218.

N. C. §2, 8, 31.

N. Y. §371, 390.

Ohio §1, 19, 94, 95.

Ore. §14, 24.

Wash. §5, 8, 23-6.

SEC. 9. [Proceedings to be *in rem*.] The proceedings under any petition for the registration of land, and all proceedings or transactions in relation to registered land, shall be proceedings

* *People vs. Crissman*, 41 Colo. 450. Replying to the objection that no judgment or decree can be rendered or entered, in favor of a defendant, regardless of the showing he may make, the court said: "The act does accord to all persons equal rights and privileges. Anyone desiring to avail himself of its terms can do so by filing his application, and can obtain the registration of his title by complying with the requirements of the statute. Although the Legislature has seen fit to allow affirmative relief only to the applicant who initiates the proceedings, this does not render the proceedings objectionable for the reason assigned. The right to a particular remedy is not a vested right. Every State has complete control over the remedies which it offers to suitors in its courts."

* *Foss vs. Atkins*, 201 Mass. 158: Facts found by Land Court become final upon dismissal of appeal to Superior Court. *Marvel vs. Cobb*, 204 Mass. 117: Finding of facts by Land Court cannot be revised by Supreme Court. *Id. Gorton vs. Tolman*, 210 Mass. 402. Findings of fact by Land Court when no trial by jury is claimed are conclusive. *Van Ness vs. Boinay*, 214 Mass. 340.

* Issues must be framed in Land Court for appeal. *McQuesten vs. Atty. Gen.*, 187 Mass. 185. Issues for jury trial may be amended by Superior Court, *Luce vs. Parsons*, 192 Mass. 8; *Foss vs. Atkins*, 193

in rem against the land, and the decrees of the court and registered transactions shall operate directly on the land, and shall vest and establish title thereto in accordance with the provisions of this Act.

SEC. 10. [Rules of Court.] The Court (court of last resort) shall from time to time make general rules and forms for procedure, subject to the provisions of this act and the general laws, and such rules and forms shall be uniform throughout the state.

SEC. 11. [Petitions for Rehearing, Appeals, and Bills of Review.] A petition for rehearing or an appeal may be taken, (or a bill of review or bill of exceptions, or writ of certiorari) may be filed, within ninety days,* and not afterwards, from any decree of the court, under the same circumstances, in the same manner and on the same condition as if such decree had been rendered by a court.

Said period may not be extended by any disability.

Cal. §45.
 Colo. §27, 28, 29.
 Ill. §26, 27, 28.
 Minn. §3394, 3396-7.
 N. Y. §380, 392.
 Ohio §25, 80.

Ore. §25, 26, 27.
 Wash. §27-29.
 Mass. §13, 15.
 Miss. §8, 25.
 N. C. §8, 25.

Mass. 486. The judge of Land Court may refuse to certify immaterial issue for appeal. *Dunbar vs. Kronmuller*, 198 Mass. 591. The court has no right to refuse jury trial when title to land is in issue. *Weeks vs. Brooks*, 205 Mass. 458. Torrens' laws have the general purpose to clear up and settle land titles, and are nothing more or less than an enlargement of the remedy to quiet title. Hence there is no constitutional right to a jury trial in Minnesota. *Peters vs. Duluth*, 119 Minn. 96. On appeal petitioner for registration has the right to open and conclude before the jury. *Bigelow vs. Wiggin*, 209 Mass. 542.

* This section is in effect a ninety-day statute of limitations. *Tyler vs. Judges*, 175 Mass. 68; *Cal.* limitation 5 years; *Colo.* and *Wash.* 90 days; *Ill.* and *Ore.* 2 years; *Minn.* and *N. Y.* 6 months; *Mass.* and *Ohio* 30 days. Limitation of 60 days not unconstitutional. *State vs. Westfall*, 85 Minn. 437. Illinois limitation good. *People vs. Simon*, 176 Ill. 165. In North Carolina an appeal may be taken "as in other special proceedings"; and in Mississippi "as in other cases." But in these States the bars seem to be wholly let down by another provision permitting an adverse claim existing at initial registry to be filed at any time thereafter, and requiring action thereon to be brought within six months after the entry of such claim, unless the clerk for cause shall extend the time. In practice, registration of title is only resorted to for business reasons and purposes. Business demands clear and quick and certain results. A long statute of limitation must destroy the usefulness of any registration act. The two years limitation has been one of the greatest handicaps in Illinois. The five-year limitation in California has been one of the reasons preventing any general resort to that act.

SEC. 12. [Books and Cases for Records.] It shall be the duty of the of each county (or the of each city) in which the office of a registrar of titles may be located to provide appropriate cases and other furniture for the safe and convenient keeping of all the books, documents and papers in the custody of such registrar, and also an official seal, and all necessary books and such printed blanks and stationery for use in registration in such county or corporation as may be ordered by the court.

Cal. §109.

N. Y. §376.

Ohio §91.

SEC. 13. [Court May be Held by Designated Judge.] If the judge of the court, for any reason shall become disqualified or temporarily incapacitated, the court may be held by any other judge of a court of record designated according to law.

Ohio §1.

PART III.

REGISTRARS AND EXAMINERS OF TITLES.

SEC. 14. [Clerks to be Registrars of Title.] The clerks^{*} of said courts shall be registrars of title under this act.

(1) They shall do all things required of them by this act, under the direction^{''} of their respective courts, and pursuant to rules and regulations established for such courts, and shall be governed by the same general laws as clerks of (circuit and municipal) courts in so far as the same may be applicable.

^{*} The act creates no new office. "It was clearly within the provisions of the Legislature to impose upon the clerk in his capacity of recorder of deeds the duties enjoined upon him by this statute. Making him registrar of titles, does not constitute him a new county officer." *People vs. Crissman*, 41 Colo. 450.

^{''} Under this provision registration is the act of the court. *Tyler vs. Judges*, 175 Mass. 68. See also *People vs. Simon*, 176 Ill. 165 and *State vs. Westfall*, 85 Minn. 437. Fierce battles have raged over the duties of registrars. The first Illinois act of 1895 was successfully assailed and declared unconstitutional because it conferred judicial powers on the registrars. *People vs. Chase*, 165 Ill. 526; and the same fate befell the first Ohio act of 1897. *State vs. Gullbert*, 56 Ohio St. 575. Subsequent acts have, however, been upheld over such objections. To avoid any difficulty or doubt in this regard Art. II of the Constitution of Ohio has been amended by the addition of Section 40 for the establishment of a land registration system and especially providing that "Judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system." The provisions of the above section are believed to be sufficient to avoid any constitutional question.

(2) Their official designation under this act shall be registrar of title for their respective counties or cities.

(3) They shall qualify and give bond in accordance with law for the faithful performance of their duties as such.

Cal. §1, 4.

Colo. §9.

Ill. §1.

Mass. §8, 73.

Minn. §3398, 3400.

N. Y. §372, 406.

Ohio §1, 2.

Ore. §1.

Wash. §9.

SEC. 15. [Duties and Powers of Registrars of Title.] Registrars of title and their deputies shall be authorized and required, under the direction of their respective courts:

(1) To issue process and to enter the decree of the court touching lands in their respective counties or cities;

(2) To enter and issue certificates of title as provided herein;

(3) To affix the seal of the court to such certificates and their duplicates;

(4) To make entries and memoranda and perform all acts of registration affecting the title to such lands;

(5) To keep a separate account of all moneys with which they may be chargeable under this act, and to make a special return thereof in accordance with the general laws and the special provisions of this act.

(6) And generally to perform such other acts as the court may prescribe.

Cal. §1, 4.

Colo. §9, 10, 11.

Ill. §2, 3, 6, 29.

Mass. §8.

Minn. §3399, 3401.

N. Y. §373-4.

Ohio §2.

Ore. §2.

Wash. §9, 10, 11.

SEC. 16. [Examiners of Titles.] The courts of land registration shall appoint,²¹ subject to removal at any time, one or more attorneys at law in their respective counties or cities, to be

²¹ Cal: Referee appointed by court in each case; \$10,000 bond. Colo. and Wash.: one attorney in each county appointed by court; bond. Ill. and Ore.: two or more attorneys appointed by registrar in each county; bond fixed by court. Mass.: one or more attorneys in each county appointed by judge; removal by Supreme Judicial Court. Minn.: one or more attorneys appointed by judges; no provision for removal. Miss. and N. C.: three attorneys in each county appointed by clerk for two years; removal at will of clerk or court. N. Y.: Attorneys or corporations authorized to guarantee or insure titles qualified under rules of Court of Appeals; bond fixed by court. Ohio: one or more attorneys appointed by court; bond \$1,000 to \$10,000.

examiners²² of titles, or the court may, in any case on motion, appoint special examiners.

(2) Their duty shall be to search the records and investigate all facts stated in the petition or otherwise brought to their notice in any case referred to them.

(3) They shall have the powers of (commissioners in chancery) and may hear the parties and receive evidence.²³

(4) They shall make report to the court, in the form required by it, with a certificate of their examination of the title and their findings of fact.

Cal. §16, 18, 19.
 Colo. §13, 24.
 Ill. §5.
 Mass. §11.
 Minn. §3381.
 Miss. §3.

N. C. §3.
 N. Y. §377, 380.
 Ohio §3.
 Ore. §5.
 Wash. §13, 24.

PART IV.

PROCEEDINGS TO OBTAIN REGISTRATION.

SEC. 17. [Petition for Registration.] Suit for registration of title shall be begun by a petition²⁴ to the court, by a person or persons claiming, singly or collectively,

(1) To own,

(2) Or to have the power of appointing or disposing of, an estate in fee simple in any land, whether subject to liens or not.

²² Examiners of title not county officers but court officers. *State vs. Westfall*, 85 Minn. 437. Examiner acts as a master in chancery. *Gage vs. Consumers' Co.*, 194 Ill. 30.

²³ Objections to testimony must be made before examiner of titles. *O'Laughlin vs. Covell*, 222 Ill. 162. Examiner must not make *ex parte* examinations of abstracts and other evidence of title. *Glos vs. Grant Bldg. Assn.*, 229 Ill. 387. Objections to admissibility of evidence before examiner must be made at the time it is offered, or will otherwise be excluded. Exceptions to examiner's report must not be general but specific, and must point out the evidence objected to and give reasons for the objections. *Bjork vs. Glos*, 256 Ill. 447.

²⁴ Complaint in action for registration need not set out the statute. It is sufficient to plead facts showing the right to registration. *Duffy vs. Shirden*; 139 N. Y. App. Div. 755. Applicant for registration must prove fee simple title either by the production of a regular chain of conveyances from the general government, or by proof of the creation of a title by adverse, open, continuous and hostile possession under claim of title for the period of twenty years, or by the acquisition of a good tax title. *Glos vs. Kingman*, 207 Ill. 26; *Glos vs. Holberg*, 220 Ill. 167. It is not incumbent on applicant to affirmatively establish

SEC. 18. [Petition by Representative.] Infants and other persons under disability may sue and defend by guardian, committee, or trustee, as the case may be, and corporations by an officer duly authorized.

(2) But the person in whose behalf the petition is made shall always be named as petitioner.

(3) A non-resident petitioner shall appoint a resident agent upon whom process and notices may be served.

SEC. 19. [Equity Practice.] Except "as otherwise provided. the suit shall be subject to the general rules of pleading and practice in equitable actions.

Cal. §5, 8, 9.
 Colo. §1-3, 5, 6, 66.
 Ill. §7-10, 12.
 Mass. §18.
 Minn. §3372-3, 3377.
 Miss. §4, 5.

N. C. §4, 5.
 N. Y. §370, 378.
 Ohio §4-7, 90.
 Ore. §5-8, 11.
 Wash. §1-3, 5, 6, 65.

SEC. 20. [Signature and Oath to Petition.] The petition and any amendment thereto shall be signed and sworn to by each petitioner, or in the case of a corporation or person under disability by the person filing the petition.

the invalidity of tax deeds held by parties defendant. *McMahon vs. Rowley*, 238 Ill. 51. The filing of application for registration stops the running of statute limitations and prevents holder of tax title from mending his hold. *Woods vs. Glos*, 257 Ill. 125. Any "owner" of land, whether his title be of record or not, may maintain proceedings for registration. A case in which title under an unrecorded deed was registered. *National Bond Co. vs. Alderson*, 99 Minn. 137. A party not in possession may bring suit for registration of title against party in possession. "The purpose of the statute is to provide a speedy and summary remedy to clear up title to land. *Reed vs. Siddall*, 94 Minn. 216. The remedy provided is not a substitute for an action of ejectment. . . . Moreover, the relief in ejectment is not co-extensive with that which may be had upon an application to register . . . it needs no argument to show that a title could never, in ejectment, be settled as against the whole world, as can be done in an application to register." The several pieces of land must form one compact body or must have the identical chain of title; must not be in different blocks separated by a street, nor in the same block separated by other lots owned by others. *Culver vs. Waters*, 248 Ill. 163.

"Procedure under the act is same as in chancery practice unless as otherwise provided. *O'Laughlin vs. Covell*, 222 Ill. 162. "All rules and principles of law applicable to equitable actions and proceedings, and rules of practice with respect to trial, introduction of evidence, findings and order of judgment, should so far as not clearly inappropriate or otherwise provided for by the act, be followed and applied." *Owsley vs. Johnson*, 95 Minn. 168. It is well settled that proceedings to register title to land are of an equitable nature. *Brown vs. Haggadorn*, 119 Minn. 491.

SEC. 21. [Contents of Petition.] The petition shall set forth

(1) A full description of the land, and any improvements thereon, with the description and valuation in its last assessment for taxation;

(2) When, how, and from whom it was acquired;

(3) Whether or not it is occupied;¹⁶

(4) An enumeration of all known¹⁷ liens, interests, and claims, adverse or otherwise, vested or contingent.

(5) And the full names and addresses,¹⁸ if known, of all persons that may be interested by marriage or otherwise, including adjoining¹⁹ owners and occupants.

(6) The petition shall be accompanied by a plan made in accordance with the rules of court.

Cal. §6.

Colo. §4.

Ill. §11, 14, 16.

Mass. §20.

Minn. §3374, 3375, 3378.

Miss. §5.

N. C. §5.

N. Y. §379, 384.

Ohio §8, 10, 11.

Ore. §9, 12, 13.

Wash. §4.

SEC. 22. [Petition to be Filed and Docketed.] The petition shall be filed with the registrar of titles, and shall be forthwith docketed, numbered and indexed by him in a book to be known as the land registration docket of his county or city.

SEC. 23. [Notice of *Lis Pendens*.] The registrar shall also forthwith cause to be recorded and indexed in the proper record book of such county or city a notice, such as is required by law for notice of *lis pendens*, which shall be filed with the petition, and which shall have the full force and effect of a notice of *lis pendens*.

SEC. 24. [Memorandum of Other Papers.] A memorandum of all other pleadings and papers filed with said registrar shall in

¹⁶ If applicant alleges lot is unoccupied, he must prove it, otherwise title cannot be registered. *Jackson vs. Glos*, 243 Ill. 280. Title cannot be registered without proof of occupancy or vacancy. *Brooke vs. Glos*, 243 Ill. 392; *Mihalik vs. Glos*, 247 Ill. 597.

¹⁷ If applicant asks for tax deed to 1 vigintillionth of the lot to be set aside as a cloud on the title, he must reimburse tax-holders. *Jackson vs. Glos*, 243 Ill. 280.

¹⁸ Street address of applicants should be given, but may be supplied later. *Creger vs. Spitzer*, 244 Ill. 208.

¹⁹ An abutting owner claiming interest in land to be registered cannot attack constitutionality of act, nor can he plead that complaint fails to state a cause of action; and if not shown by examiner's report to have any interest in tract to be registered and not designated by order of court as a party to be served, he is not a necessary party; if made a party by complaint, it is subject to demurrer. *Duffy vs. Shirden*, 139 N. Y. App. Div. 755.

each case be entered upon his registration docket under the proper number as aforesaid, and the papers in the cause and all writings, instruments and records filed with him shall be safely kept by him in his office, duly numbered, dated, and indexed.

Cal. §11.
 Colo. §15, 16, 43.
 Ill. §16, 17.
 Mass. §12, 48.
 Minn. §3380.

N. Y. §370, 382.
 Ohio §7, 36, 38, 92.
 Ore. §15, 16.
 Wash. §15, 16, 42.

SEC. 25. [Reference to Examiner of Titles.] Upon the filing²² of a petition for the registration of any land, the court shall refer the same to one of the examiners of title provided for by the act, to examine and report thereon.

SEC. 26. [Report of Examiner.] Such report²³ shall include:

(1) An abstract of title to the land, made from the records and all other evidence²⁴ that can be reasonably obtained by the examiner;

²² In Miss. and N. C. no reference is made to the examiner until after the publication of notice and service of process. In other States reference is made as soon as the application or petition is filed. In Illinois, however, the examiner does not report until after expiration of the time specified in the order of publication for the appearance of defendants, and until opportunity is given them to contest the rights of the applicant. An abstract of title is required to be filed in Mississippi and North Carolina. In other States the examiner is required to report his opinion, and sometimes to report the facts on which it is based. Such a report as is contemplated by this section will probably disclose the name and addresses of all persons having any interest in or claim against the land. If any should be omitted or overruled, they will be discovered under subsequent proceedings. In New York an examiner's certificate must accompany the complaint, and it is for the court to decide whether that is sufficient. It seems better to have an impartial examiner appointed by the court. As he has the powers of a master in chancery, he can compel the testimony of witnesses. He is required to make a report with full extracts from the records, so that the court can judge for itself of the condition of the title.

²³ It will be presumed that the examiner considered only competent evidence in making his findings, if the report contains sufficient competent testimony to support such findings. *McMahon vs. Rowley*, 238 Ill. 31. Substance of proofs need only be reported by examiner, unless otherwise required by some party. If evidence be not returned, party complaining should ask trial judge for rule on examiner. *Creger vs. Spitzer*, 244 Ill. 208. Procedure where examiner fails to report evidence on request. Harmless errors not regarded. *Mundt vs. Glos*, 246 Ill. 636. If no exception be taken to report of examiner, it is conclusive. *Kenney vs. Glos*, 253 Ill. 555. Exceptions to master's report; practice on appeal. *Welsh vs. Briggs*, 204 Mass. 540.

²⁴ Objections to evidence must be made by exceptions to examiner's report *Gage vs. Consumer's Co.*, 194 Ill. 30. Rules for objections to examiner's report. *Glos vs. Hobane*, 212 Ill. 222; *Glos vs. Holberg*, 220 Ill. 167.

(2) Full extracts from the records to enable the court to decide the questions involved;

(3) The names and addresses so far as ascertained of all persons interested in the land, as well as adjoining owners and occupants, showing their several interests, and indicating upon whom²² and in what manner process should be served or notice given in accordance with the provisions of this act.

Cal. §6, 18, 19.

Colo. §17, 24.

Ill. §18.

Mass. §29.

Minn. §3382.

Miss. §8.

N. C. §8.

N. Y. §380.

Ohio §13.

Ore. §17.

Wash. §17, 24.

SEC. 27. [Order of Publication *in Rem*.] Upon the filing of the report of the examiner of titles, the court shall cause notice²³ thereof to all persons shown therein to be entitled to the same, and "to all whom it may concern," to be published, and to be posted in the county or city where the land lies, in the same manner and with the same effect as an order of publication in other proceedings *in rem*, subject, however, to the limitation imposed by section eleven of this act.

Cal. §13.

Colo. §17, 19, 20.

Ill. §20.

Mass. §30.

Minn. §3383-4.

Miss. §6, 7.

N. C. §6.

N. Y. §385-6.

Ohio §14.

Ore. §19.

Wash. §17, 19, 20.

SEC. 28. [Notice by Mail.] A copy of the order of publication shall in all cases be mailed by registered letter demanding a return, to every person interested, named in the petition or in the report of the examiner of titles whose address is given or known.

SEC. 29. [Notice by Posting on Land.] The Court shall also cause an attested copy of said order to be posted in a conspicuous

²² If State holds tax liens, it should be made a party. *Nat'l. Bond Co. vs. Hopkins*, 96 Minn. 119. Persons whose claims are barred are not necessary parties. *O'Laughlin vs. Covell*, 222 Ill. 162. Court cannot disregard examiner's report nor decline to make defendant any party whom the examiner finds to have such an interest as to require that he shall be so named. Registration is void against any such party and his privies not made parties. *Dewey vs. Kimball*, 89 Minn. 454.

²³ When application omits names of parties holding easements, but examiner's report gives names and recommends that they be made parties, if not made parties the registration is void and subject to collateral attack on account of constructive fraud. *Riley vs. Pearson*, 120 Minn. 210.

place by the sheriff on each parcel of land included in the petition.

It shall require such sheriff to go upon the lands and ascertain and report to court the names and addresses of any person, or persons, actually occupying the premises.

SEC. 30. [Notice to State.] If the petition involves the determination of any public rights or interests, the court shall cause a copy of the order of publication to be delivered by the registrar to the proper attorney for the state, county or city.

SEC. 31. [Other Notice.] The court may cause other or further notice to be given in such manner and to such person as it may deem proper.

And such personal service of process as is required in equitable actions shall also be made upon residents of the state, not under disability, who are made known²⁸ to the court before final decree and can be reached by its process, unless such service be waived by appearance or otherwise.

SEC. 32. [Effect of Notice.] Notice²⁸ given under the preceding sections shall be in lieu of personal service of process, except

²⁸ When a name of a claimant is known to applicant, he must be summoned and an order of publication does not bind him. "As he is not an 'unknown party' the concealment of his claim is a fraud on the court, and the decree therein is as to him of no force and effect." *Baart vs. Martin*, 99 Minn. 197. Failure to republish notice after amendment of description of lots in application is not fatal, where all parties having or claiming to have any interest in the lots were personally served by summons or entered their appearance in writing. *Tower vs. Glos*, 256 Ill. 121. If written consent be given to application for registration, no summons against such party is necessary, nor that he be given an opportunity to be heard. He cannot appeal. Such written consent need not be acknowledged before a notary, and it is immaterial whether the statute expressly provides for such consent. *Mooney vs. Valentynovicz*, 262 Ill. 355.

²⁹ This statute changes the rule of law as to notice, but the Legislature has the right to do this, without violating the Constitution. "Even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail, and not the whole law." *People vs. Simon*, 176 Ill. 165. By Section 31 service of process is required to be made on all known residents interested. In delivering the opinion of the court in the suit of *Tyler vs. Judges*, 175 Mass. 68, Chief Justice Holmes said: "I am free to confess, however, that with the rest of my brethren, I think the act ought to be amended in the direction of still further precautions to secure actual notice before a decree is entered, and that, if it is not amended, the judges of the court ought to do all that is in their power to satisfy themselves that there has been no failure in this regard before they admit a title

as provided in section thirty-one, and shall be conclusive and binding on all the world.

Cal. §13.
Colo. §20a.
Ill. §19, 21.
Mass. §31.
Minn. §2384.
Miss. §6.

N. C. §6.
N. Y. §385-7.
Ohio §15.
Ore. §18, 20.
Wash. §20a.

SEC. 33. [Certificate of Service.] Certificates from the registrar and sheriff, or their deputies, showing the due execution of said order of publication and the mailing and posting of copies thereof, as required by sections twenty-seven to thirty, inclusive, shall be filed among the papers in the cause and be conclusive "proof of such service.

Colo. §20a.
Mass. §31, 32.
Miss. §7.
N. C. §7.

N. Y. §387-8.
Ohio §16.
Wash. §20a.

SEC. 34. [Time of Hearing.] After the expiration of at least fifteen days from the publication and posting of said order of publication as aforesaid, the cause shall be set down for hearing.

SEC. 35. [Guardian *ad Litem*.] And thereupon the court shall appoint some discreet and competent attorney at law of the county or city in which the land lies, as guardian *ad litem* for all persons under disability, not in being, unascertained, unknown, or out of the state, who may have or appear to have an interest in or claim against the land.

SEC. 36. [Answer to Petition.] Any person having any interest in or claim against the land, whether named in the petition and order of publication or not, may appear and file an answer at

to registration." Acting on this suggestion the Massachusetts act was amended in 1898 and in 1900 to this effect: "The court shall, so far as it considers it possible, require proof of actual notice to all adjoining owners, and to all persons who appear to have any interest in or claim to the land included in the application. Notice to such person by mail shall be by registered letter." In this section we have gone even further to meet all objections and to insure as far as possible the discovery and notification of all possible claimants.

"The Torrens System of registration of land titles is different from the prevalent method of recording; the manner of bringing lands under such system must be provided by statute; the proceeding is of a different nature from an ordinary action at law or suit in chancery; and we cannot say that the Legislature acted unreasonably in providing for a rule of evidence applicable to the proceeding without extending it to all other forms of action in which the title of real estate is involved." *Waugh vs. Glos*, 246 Ill. 604.

any²² time before final decree, unless such person shall have been served personally with notice.

SEC. 37. [Signature and Oath to Answer.] The answer shall be personally signed and sworn to, by the claimant, or in case of a corporation or a person under disability, by the person filing the answer, unless the court, for good cause shown, otherwise direct.

PART V.

ADJUDICATION OF TITLE.

SEC. 38. [Action on Report of Examiner of Titles.] After the expiration of the time as provided by section thirty-four, the court may proceed to take such action as may be proper,²³ upon the report of the examiner of titles and all other evidence before it with reference to the rights of all persons appearing to have any interest in or claim against the land, and may refer the cause again or require further proof.

Cal. §14, 18.
 Colo. §18, 23, 25.
 Ill. §23, 24.
 Mass. §36.
 Minn. §3382.

Miss. §8.
 N. C. §8.
 Ohio §18, 19.
 Ore. §23, 24.
 Wash. §18, 23, 25.

SEC. 39. [Order of Survey, etc.] While the cause is pending before the examiner of titles, or at any time before final decree, and whenever after initial registration a tract of land is subdivided, the court

(1) May require²⁴ the land to be surveyed, after due notice to owners of adjoining land, by a competent surveyor appointed by the court;

²² The Colorado and other acts having special provisions on this subject provide that an answer may be filed within the time named in the summons, "or within such further time as may be allowed by the court." It is fairer and better to allow an answer at any time before final decree.

²³ Under this provision the cause will be taken for confessed as to all persons who have not appeared and answered and the court will proceed to dispose of the claims of those who have not appeared. *People vs. Crissman*, 41 Colo. 450, expressly decides that the court is not bound by the examiner's report.

²⁴ When property is subdivided for registration of any subdivision there must be proof thereof by plat or other evidence sufficient for conveyance. *Glos vs. Ehrhardt*, 224 Ill. 532. Decree reversed because no plat was proved before registration, and it was impossible to locate the subdivision from the evidence. *Glos vs. Bragdon*, 229 Ill. 223; *Glos vs. Grant Bldg. Assn.*, 229 Ill. 387. A survey is of prime importance and necessity, especially in states in which lands have not been laid off by government survey.

(2) Shall order durable bounds to be set and a plat thereof to be filed among the papers of the suit;

(3) Shall enter all necessary decrees for the establishment, declaration and protection of the right and title of all persons appearing to have any interest in or claim against the land.

Cal. §14.
Ill. §25.
Mass. §35.
Miss. §5, 13, 15.

N. C. §5, 13, 15.
N. Y. §381.
Ohio, §19.
Ore. §24.

SEC. 40. [Petition May Be Dismissed.] If in any case the petitioner so desires, or if the court is of opinion that the petitioner's title is not and cannot be made proper for registration, the petition may be dismissed " without prejudice, on terms to be determined by the court.

Cal. §12.
Colo. §26.
Minn. §3382.

Ohio, §20
Wash. §26.

SEC. 41. [Amendments to Petition and Other Pleadings.] Amendments " to petitions or other pleadings, or the severance "

" Petitioner must comply with terms fixed by court in withdrawing petition. *McQuesten vs. Commonwealth*, 198 Mass. 172. After decree for petitioner, when on appeal and trial by jury a verdict is given for respondent, petition must be dismissed. *Robinson vs. Richards*, 209, Mass. 295. A provision authorizing a dismissal of application does not violate constitution. *Peters vs. Duluth*, 119 Minn. 96. Court must dismiss application, on motion, without prejudice, upon such terms as may be fixed by it. "The Torrens Act makes provisions for a special proceeding . . . In a special proceeding, it being within the power of the Legislature to limit the jurisdiction of the court, the bounds of the court's jurisdiction are to be found in the limitations of the act under which its jurisdiction is invoked. The Legislature might have provided for a determination of conflicting interests if it had been so inclined. But it did not do so. . . . There is more or less difference in the Torrens acts as adopted in the several States. Where, as in Illinois, no provision is made for a voluntary dismissal, but the court is put to a final determination of the issue, it has been held that the court may grant relief as to such portion of the land as the evidence shows the title in fee to be in the applicant, and deny it as to the remainder. *Glos vs. Holberg*, 220 Ill. 167. But our law was drawn upon a different theory." *Krutz vs. Dodge*, 66 Wash. 178.

" Amendment of petition by substituting name of respondent for petitioner is illegal and void. "If the respondents had wished to become petitioners they should have brought their own petition." *Foss vs. Atkins*, 204 Mass. 337. Court properly permitted answer to be amended. *Kuby vs. Ryder*, 114 Minn. 217.

" Title to a portion of the property may be registered when properly established. *Glos vs. Holberg*, 220 Ill. 167. G holding tax title to a portion of land offered for registration, claims ownership. Examiner of titles reported against validity of G's claim, but applicant dismissed application as to said portion of land. Held: G cannot com-

thereof, including joinder, substitution, or discontinuance of parties, and the omission or severance of any portion or parcel of the land, may be ordered or allowed by the court at any time before final decree upon terms that may be just and reasonable; and the court may require facts to be stated in an amended petition in addition to those prescribed by this act.

Cal. §10.

Colo. §4.

Mass. §20, 21, 23, 27.

Minn. §3378.

Ill. §14.

Ore. §13.

Wash. §4.

SEC. 42. [Land May be Dealt With, Pending Registration, Subject to Decree of the Court.] The land described in any petition may be dealt with pending "registration as if no such petition had been filed.

(1) But any instrument admitted to record under the general laws in relation to such land pending action on said petition shall also be docketed and indexed as required by section twenty-two of this Act;

(2) And any person who shall acquire any interest in or claim against such land shall at once appear as a petitioner, or answer as a party defendant, in the proceedings for registration, and such interest or claims shall be subject to the decree of the court.

Colo. §32.

Mass. §22, 28.

Minn. §3395.

N. Y. §398.

Ohio §12.

Wash. §32.

SEC. 43. [Certificate of Taxes Paid.] No final decree of registration shall be entered until proof is made by certificate from the proper officer that all taxes and levies assessed on said land and then due or delinquent have been paid in full.

SEC. 44. [Decree of Registration is Final, Quiets Title, and Binds All the World, Subject to Appeal, etc.] If the court, after

plain because his claim was allowed; also cannot complain of the application, nor because not allowed to make unnecessary amendments to his answer. *Glos vs. Murphy*, 225 Ill. 58. See also *Tower vs. Glos*, 256 Ill. 121. The provisions of this section have been broadened in the interest of business under the act. It covers the amendments to the Massachusetts act and adopts suggestions made by Hon. Charles Thornton Davis, Chief Judge of the Massachusetts Land Court, as to the omission or severance of any portion or parcel of the land.

"Allenees of claimant pending registration proceedings are not entitled to answer as a matter of right, but answer must be filed in a reasonable time; a delay of six months is unreasonable, and the court did not abuse its discretion in denying the right to answer after such delay. *Brown vs. Haggadorn*, 119 Minn. 491.

final hearing, is of opinion that the petitioner has title²² proper for registration, a decree of confirmation and registration shall be entered; and every decree of registration entered in accordance with the provisions of this act,

(1) Shall bind²³ the land and quiet the title thereto, except as herein otherwise provided;

(2) Shall be forever binding and conclusive upon all persons, resident or non-resident, including the state, whether mentioned by name in the order of publication or included under the general description, "to all whom it may concern";

(3) And shall not be attacked or opened or set aside by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for rehearing or reversing judgments or decrees, except as herein especially provided.

Cal. §9, 14, 15, 17.

Colo. §23, 27.

Ill. §25, 26.

Mass. §34, 37.

Minn. §3390.

Miss. §8, 9.

N. C. §8, 9.

N. Y. §391.

Ohio §22.

Ore. §24, 25.

Wash. §23, 27.

SEC. 45. [Form of Decree and Manner of Registration.] Every decree of initial registration and subsequent memorial shall be

²² Applicant must prove fee simple title in himself by tracing back the government grant or by statutory limitations. *Glos vs. Holberg*, 220 Ill. 167. Applicant must show title good against the world; *prima facie* title not sufficient. *Glos vs. Wheeler*, 229 Ill. 272. Defendant to application cannot complain of title to lots in which he claims no interest. *Mundt vs. Glos*, 231 Ill. 158. A good tax title may be registered. *Tobias vs. Kaspzyk*, 247 Ill. 80. In a petition for registration of tax title, former owner was made defendant. Time for redemption had not expired when application was filed, but owner failed to take advantage of this and the title was registered in name of claimant after redemption period. *Held*: a good registry, and that no one but former owner might have complained; State could not. *Gates vs. Keigher*, 99 Minn. 138. Tax title registered subject to lien of city assessments. *Gould vs. City of St. Paul*, 110 Minn. 324. Tax title registered. *Hendricks vs. Hess*, 112 Minn. 252. Title by adverse possession under statute of limitations may be registered; partition decree gives color of title. *Peters vs. Dicus*, 254 Ill. 379. When one consents to registration, decree is final as to him and cannot be set aside at a subsequent term. *Mooney vs. Valentynovicz*, 255 Ill. 118. Petitioner's right to fee in land under R. R. right of way and station may be registered. *Battelle vs. N. Y. & C. Ry.*, 211 Mass. 442. Petitioner must recover upon strength of his own title, and not upon the weakness of his adversary's title. *Owsley vs. Jackson*, 95 Minn. 168.

²³ A decree of registration cannot be collaterally attacked for error or fraud. *State vs. Ries*, 123 Minn. 397.

made in convenient form for transcription upon the certificate of title, showing the following items:

(1) *Owners:*

Name and residence of the owner, and whether married or unmarried, and the name of the consort, if any;

If the owner is under disability, the nature thereof, and if an infant, his age;

If a corporation, the place of incorporation and its chief office;

If a personal representative or trustee, the name of decedent or beneficiary.

(2) *Land:*

Description of the land as finally determined by the court;

The estate of the owner therein;

Also all the rights and easements appurtenant to said land;

And also a description of all particular estates, easements,⁷ liens, or other encumbrances, or rights to which the land or the owner's estate is subject, showing their relative priorities.

(3) *Other Matters:* Any other matter determined in pursuance of the provisions of this Act.

SEC. 46. [Time of Taking Effect.] Such decree or memorial shall take effect upon the land described therein as of the day, hour and minute it is filed for registration in the office of the proper registrar.

SEC. 47. [Registrar's Memorandum.] The registrar shall forthwith record the said decree in the proper book of the court, and shall forthwith enter and properly number, minutely date, and index a memorandum thereof on his land registration docket and in the entry book hereinafter directed to be kept by him, and shall cause to be recorded and indexed a like memorandum in the proper deed book of the county or city.

⁷ "There is no provision in the Land Registration Act for an application by the owner of an easement for the registration of his title . . . It seems to us, therefore, that the statute was not intended to afford a remedy by which owners of easements in the same land could have the nature and extent of their rights settled, and should not be so construed." *Minot vs. Cotting*, 179 Mass. 325. Land Court may determine boundaries of highway. *First National Bank vs. Woburn*, 192 Mass. 220.

PART VI.

CERTIFICATES OF TITLE.

SEC. 48. [Entry in Registry of Titles.] Said decree or memorial, or so much thereof as may be ordered by the court, shall be copied, numbered, signed, and sealed with the seal of the court by said registrar and registered in the book hereinafter directed to be kept by him, to be known as the register of titles, for his county or city; and when so registered shall constitute the original certificate of title.

Subsequent certificates covering the same land shall be in a like form, but shall be designated "transfer certificate No. (the number of the next previous certificate covering the same land), original certificate registered (date, volume and page of registration)."

New and appropriate numbers shall be adopted for any subsequent certificates not covering the whole of said land.

Cal. §15, 16, 23, 31, 57.

Colo. §31, 36, 39, 41.

Ill. §29-33, 38, 56.

Mass. §39, 41, 53, 54.

Minn. §3391.

N. Y. §394.

Ohio §22, 23, 37, 75, 76.

Ore. §28, 32.

Wash. §31, 35, 38, 40.

SEC. 49. [Entry Book Kept by Registrars.] (1) Each registrar shall keep an entry book in which he shall enter, in the order of their reception, a memorandum of any writing, instrument, or record filed with him for registration, and shall note in such book the year, month, day, hour, and minute of such filing.

(2) Every such writing, instrument, or record shall be numbered, indexed and indorsed with reference to the entry thereof and securely kept in the office of the registrar.

(3) Every such entry shall be minutely dated, numbered and indexed, and shall refer to the certificate of title hereinafter mentioned, upon which, as well as upon its duplicate or duplicates, a memorandum of such entry shall be made.

Cal. §22, 51.

Colo. §47.

Ill. §49-51.

Mass. §55.

Minn. §3402, 3406.

N. Y. §409.

Ohio §35.

Ore. §48-50.

Wash. §46.

SEC. 50. [Register of Titles Kept by Registrar.] Each registrar shall also keep a register of titles book, in which, under the direction of the court, he shall

(1) Register, number and index the original certificates of title and all subsequent certificates of title, and all voluntary or involuntary transactions authorized to be registered under this Act; and

(2) Note thereon, and also upon the duplicate certificate thereof, when originally issued or subsequently presented, the day, hour, and minute of registration in each case in conformity with the date shown by the entry book.

Cal. §29.
 Colo. §35.
 Ill. §35, 98.
 Mass. §55.
 Minn. §3402, 3406.
 Miss. §10.

N. C. §10.
 N. Y. §395.
 Ohio §23, 82.
 Ore. §34, 97.
 Wash. §34.

SEC. 51. [Certificate of Title.] (1) Every certificate of title entered in the register of titles as aforesaid, together with the memorials thereon, if any, shall be known as "the certificate of title."

(2) Said certificate shall be conclusive evidence of all matters contained therein, except as otherwise provided in this Act.

(3) No erasure, alteration, or amendment of said certificate, or of any memorial thereon, shall be made except by order of court.

Cal. §23, 30.
 Colo. §35, 37, 48, 57.
 Ill. §35-7, 39.
 Mass. §40, 46, 107.
 Minn. §3404, 3408, 3439.

N. Y. §395-7, 399.
 Ohio §23, 27, 72, 93, 98.
 Ore. §34-6, 38.
 Wash. §34, 36, 47, 50.

SEC. 52. [Owner's Duplicate Certificate.] An exact copy of the certificate of title shall be made, except that it shall be conspicuously stamped or marked "owner's duplicate," and shall be delivered to the owner, or his attorney, duly appointed, upon his receipt therefor in writing upon said certificate of title attested by the registrar or his deputy.

SEC. 53. [Certificates of Title to be Numbered, and Memorials Thereon to be Signed and Sealed.] (1) All the certificates of title of land in each county or city shall be numbered consecutively.

(2) A separate folium, with appropriate spaces for subsequent memorials, shall be devoted to each title in the register of titles for each county or city.

(3) Every certificate and memorial thereon shall appropriately conform to the requirements of sections forty-five and forty-eight of this Act as to particulars of form.

(4) Every memorial made upon any certificate of title or duplicate certificate under any provision of this Act shall be signed by the registrar and sealed with the seal of the court and minutely dated and numbered in conformity with the date and number shown by the entry book.

Cal. §23, 50.
 Colo. §36, 81.
 Ill. §35, 56.
 Mass. §40.
 Minn. §3403.

Miss. §11.
 N. C. §11.
 N. Y. §394.
 Ohio §23, 37.
 Ore. §34, 55.

PART VII.

REGISTRATION OF TRANSFERS AND OTHER TRANSACTIONS.

SEC. 54. [Transfers of the Whole of any Registered Estate.] Whenever the whole of any registered estate is transferred, the transaction shall be duly noted and registered in accordance with the provisions of this Act.

Thereupon the certificate of title and any duplicate certificate relating to such estate shall be cancelled by the registrar of each county or city in which the land, or any part thereof, lies, if desired by the registered owner, and a new certificate or certificates of title shall be entered in the register of titles for such county or city, and a duplicate or duplicates thereof issued, as the case may require.

Cal. §25, 26, 48.
 Colo. §38, 52, 60, 61.
 Ill. §34, 47, 57, 64.
 Mass. §56.
 Minn. §3409, 3417, 3420.
 Miss. §12.

N. C. §12.
 N. Y. §413.
 Ohio §37.
 Ore. §33, 46, 56, 63.
 Wash. §37, 51, 59, 60.

SEC. 55. [Partial Transfers, Encumbrances, Leases.] If only a portion of such estate is transferred, or in case of an encumbrance or lease for more than one year, the transaction shall be duly noted and registered as aforesaid; and a new certificate of title shall be entered in the register of titles and new owner's duplicate certificate shall be issued for the portion transferred and

the portion untransferred, or a beneficiary's duplicate or lessee's duplicate may be issued as the case may require.

Cal. §25, 26, 49.	N. C. §13, 14.
Colo. §40, 49, 52, 63.	N. Y. §407.
Ill. §48, 64.	Ohio §3, 8, 39.
Mass. §47, 57, 59.	Ore. §47, 63.
Minn. §3417, 3420, 3422.	Wash. §39, 48, 51, 62.
Miss. §13, 14.	

SEC. 56. [Memorials to be Noted.] All registered encumbrances, rights, or adverse claims affecting the estate represented thereby, shall continue to be noted upon every outstanding certificate of title and duplicate certificate until the same shall have been released or discharged.

Cal. §43.	N. C. §14.
Colo. §56, 57.	N. Y. §403.
Ill. §45.	Ohio §33.
Mass. §58.	Ore. §44.
Minn. §3420.	Wash. §55, 56.
Miss. §14.	

SEC. 57. [Registration of Voluntary Transactions.] In voluntary transactions, the duplicate certificate of title must be presented along with the writing or instrument filed for registration; and thereupon, and not otherwise, the registrar shall be authorized to register the transaction, under the direction of the court, upon proof of payment of all delinquent taxes and levies, if any.

Cal. §58-65.	N. C. §14, 15.
Colo. §50, 52-3, 57-8, 63.	N. Y. §406, 415.
Ill. §54-5, 59-67, 80-81.	Ohio, §44-49.
Mass. §60.	Ore. §53-54, 58-66.
Minn. §3419, 3420, 3423.	Wash. §49, 51-2.
Miss. §14, 15.	

SEC. 58. [Registration of Involuntary Transactions.] In involuntary transactions, a certificate from the proper state, county, city, or court officer, or a certified copy of the order, decree, or judgment of any court of competent jurisdiction, or other appropriate evidence of compliance with the statute in relation to such transaction, when filed in the office of the proper registrar, shall be authority for him to register the transaction under the direction of the court.

Provided that any writing or instrument for the purpose of transferring, encumbering, or otherwise dealing with equitable

interests in registered land, may be registered with such effect as it may be entitled to have.

Cal. §72-3.	N. Y. §417.
Colo. §60-61, 72, 76, 91.	Ohio §43, 50-6, 59-64, 66-7,
Mass. §66, 70, 75, 77, 79-86.	78.
Minn. §3419, 3426-7, 3430,	Ore. §79-80, 83-90.
3434-5, 3441.	Ill. §80-81, 84-91.
Miss. §14, 16.	Wash. §59, 60.
N. C. §14, 16.	

SEC. 59. [Production of Duplicate Certificate Required.] Whenever a duplicate certificate is not presented to the registrar along with any writing, instrument, or record filed for registration under this Act, he shall forthwith send notice by registered mail to the owner of such duplicate requesting him forthwith to produce the same, in order that a memorial of the transaction may be made thereon; and such production may be required by suitable process of the court, if necessary.

Colo. §50, 78.	N. C. §14, 17.
Ill. §60, 64, 88.	Ohio §28, 37, 41, 74, 78,
Mass. §51, 71, 106.	100.
Minn. §3413, 3419, 3430.	Ore. §59, 63, 87.
Miss. §14, 17.	Wash. §49, 77.

SEC. 60. [Registration of Trusts, Conditions, Limitations and Other Equitable Interests and Estates.] Whenever a writing, instrument, or record is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificates, but it shall be sufficient to enter in the entry book and upon the certificates a memorial thereof by the terms "in trust," or "upon condition," or other apt words, and to refer by number to the writing, instrument, or record authorizing or creating the same.

And if express power is given to sell, encumber, or deal with the land in any manner, such power shall be noted upon the certificates by the terms "with power to sell," or "with power to encumber," or by other apt words.

And unless express power be given as aforesaid, no subsequent transfer or memorial shall be registered on such certificate except by special order of court.

Cal. §67, 70.
 Colo. §64.
 Ill. §68-9.
 Mass. §64-8.
 Minn. §3429.

Miss. §10, 19.
 N. C. §10, 19.
 Ohio §32, 65.
 Ore. §67-8.

SEC. 61. [Registration of Estates of Decedents.] (1) Lands and any estate or interest therein registered under this act shall, upon the death²² of the owner, testate or intestate, go to his personal representative in like manner as personal estate, and shall be subject to the same rules of administration as personalty, except as otherwise provided in this Act.

(2) But nothing herein contained shall alter or affect

(a) The course of ultimate descent under the statute of descents and distributions and the rights of dower and curtesy, when duly registered;

(b) Nor the order in which real and personal assets respectively are now applicable in and towards the payment of funeral and testamentary expenses, debts, or legacies;

(c) Nor the liability of real estate to be charged with the payment of debts and legacies.

Cal. §74-5.
 Colo. §74.
 Ill. §70-2
 Mass. §91.
 Minn. §3436.

N. Y. §423-5.
 Ohio §42-3.
 Ore. §69-71.
 Wash. §73.

SEC. 62. [Powers of Personal Representatives.] (1) Subject to the powers, rights and duties of administration, the personal representatives of such deceased owner shall hold such real estate as trustees for the persons by law beneficially entitled thereto,

(2) But, unless otherwise entitled by law to commissions, shall be entitled to no commissions thereon except in cases of necessary sales in due course of administration.

(3) And the heirs at law or beneficiaries aforesaid shall have the same power of requiring a transfer of such estate as if it were personal estate.

Ill. §70-72.

Ore. §69-78.

²² "We are not impressed with the soundness of the objections to those sections of the statute which relate to the descent of lands on the death of a registered owner." *People vs. Simon*, 176 Ill. 165.

SEC. 63. [Registration of Delinquent Taxes and Levies.] (1) It shall be the duty of the treasurer or other collector of taxes or levies of each county, town, or city, not later than the . . . day of . . . in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the non-payment of the taxes or levies thereon, including the penalty therefor, in the office of the proper registrar for registration.

(2) If any such officer fail to perform said duty, he and his sureties shall be liable for the payment of said taxes and levies, with the penalty and interest thereon.

Miss. §21.
Ill. §82.

N. C. §21.

SEC. 64. [Registration of Sales for Delinquent Taxes or Levies.] (1) Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the treasurer or other officer making such sale, forthwith to file a memorandum thereof for registration in the office of the proper registrar.

(2) Thereupon the registered owner shall be required to produce his duplicate certificate for cancellation, and a new duplicate certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within ninety days after the date of such sale.

(3) But a memorial shall be entered upon the certificate of title, and also upon any such new duplicate certificate, reserving the privilege of redemption in accordance with law.

Cal. §77-83.
Ill. §82-3.
Miss. §22.

N. C. §22.
Ohio §57-8.
Ore. §81-2.

SEC. 65. [Same: Registration of Redemption.] In case of any redemption under the preceding section, a memorial of the fact shall be duly registered; and if a duplicate certificate has been issued to any purchaser, the same shall be cancelled and a new duplicate shall be issued to the person who has redeemed.

SEC. 66. [Same: Registration of Final Sale, if No Redemption.] (1) If there be no redemption under said section in accordance with law, it shall be the duty of the treasurer, or other collector of taxes of the county or corporation in which the land lies, to sell the same, at public auction, for cash, having first given reasonable notice of the time and place of sale.

(2) The proceeds of sale shall be applied—

First, to the payment of all taxes then due the state, and all levies then due the county, town, or city, with interest, penalty and costs;

Second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars;

Third, to the payment of a commission to the officer making the sale of five per centum on the first three hundred dollars and two per centum on the residue of the proceeds;

Fourth, to the satisfaction of any liens other than said taxes and levies registered against said land in the order of their priorities;

Fifth, and the surplus, if any, to the person in whose name the land was previously sold for taxes, subject to redemption, as provided by section sixty-four of this Act, his heirs, personal representatives, or assigns.

(3) A memorial of the sale under this section shall be duly registered, and a new certificate shall be entered and a duplicate issued in favor of the purchaser, in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Act.

SEC. 67. [Same: Future Interests Not Affected.] Nothing in the preceding section shall be so construed as to affect, or divest, the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or levies assessed thereon.

Cal. §77-83.
Ill. §82-3.
Miss. §23.

N. C. §23.
Ohio §57.
Ore. §81-2.

PART VIII.

SUNDRY PROCEEDINGS AFTER REGISTRATION.

SEC. 68. [Petitions Concerning Registered Land and Caveats and Decrees Thereon.] Any registered owner of any estate or interest in land, or any person having any claim against registered land arising from any other cause than fraud or forgery since the land was registered, may, within ninety days after the

claim or cause of complaint shall have arisen, petition the court for relief in any matter within its jurisdiction; and it shall be the duty of the proper registrar, upon the request of any such person, to register a memorial that such petition has been or will be filed, which memorial shall serve as a caveat and be notice to all persons.

(2) And whenever any registrar is in doubt as to the proper registration to be made in any case, or when any person is aggrieved by any act or refusal to act by the registrar, the question may be likewise submitted by petition.

SEC. 69. [Same: Hearing and Decree.] After notice to the parties interested, the court shall hear the cause, and, with due regard to the provisions of this Act, shall enter such decree as justice and equity may require, which shall be registered, and take effect in like manner as the original decree for registration.

SEC. 70. [Same: Service of Notice.] Notice in lieu of process under this Act or otherwise in relation to registered land, may be served upon any person by registered mail, and the post office registry return receipt shall be evidence of such service, and shall be binding, whether such person resides within or without the state; but the court may in any case order different or further service by publication once a week for four successive weeks in some convenient newspaper or otherwise, which shall be likewise binding.

Cal. §39, 97-100.

Colo. §49, 62, 78, 82, 89.

Ill. §92-6.

Mass. §52, 105, 107.

Minn. §3407, 3426, 3435,
3438-9.

Miss. §25.

N. C. §25.

N. Y. §383, 422.

Ohio §40, 68, 70, 79.

Ore. §91-5.

Wash. §48, 61, 77, 81, 88.

SEC. 71. [Proceedings Upon Loss or Destruction of Duplicate Certificate.] (1) Whenever a duplicate certificate of title is lost or destroyed, the owner, or his personal representative, may petition the court for the issuance of a new duplicate.

(2) Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper.

(3) Upon satisfactory proof that said duplicate certificate has been lost or destroyed, the court may direct the issuance of a

new duplicate certificate, which shall be appropriately designated and take the place of the original duplicate.

Cal. §27.
Colo. §51.
Ill. §58.
Mass. §104.
Minn. §3412.

Miss. §24.
N. C. §24.
N. Y. §414.
Ore. §57.
Wash. §50.

PART IX.

LEGAL EFFECTS OF REGISTRATION OF TITLE.

SEC. 72. [Effect of Registration as Notice to Subsequent Purchasers.] Every voluntary or involuntary transaction which, if recorded, filed, or entered in any clerk's office, would affect unregistered land, shall, if duly registered in the office of the proper registrar, and not otherwise, be notice to all persons from the time of such registration, and operate in accordance with law and with the provisions of this Act upon any registered land in the county or city of such registrar to which it relates.

SEC. 73. [Effect of Registration Procured Through Fraud or Forgery.] Any registration procured through fraud or forgery may be set aside by the court according to the rules of equity; but the rights and title of an innocent intervening registered encumbrancer or purchaser for value and without notice shall not be affected thereby. And in all such cases the injured party may pursue all his legal and equitable remedies² against the party or parties to such fraud or forgery.

Colo. §46.
Ill. §42-3, 65.
Mass. §59, 70.
Minn. §3416, 3430, 3440-1.
Miss. §18.

N. C. §18.
N. Y. §392, 402, 410.
Ohio §41, 50, 88, 89.
Ore. §41-2.
Wash. §45.

² Application to vacate a decree of registration for fraud is governed by general equitable considerations. "The fact that a statute does not expressly provide that fraud shall invalidate acts authorized to be done under it does not deprive the courts of the general power to protect the rights of the parties. . . . The 60-day limitation contained in the statute when these transactions occurred (now made six months by R. L. 1905, Sec. 3396) has no application to the case at bar. If the defrauded party is not guilty of laches, he may attack the decree on the ground that it was obtained by fraud, so long as the land stands registered in the name of the party who was guilty of the fraud." *Baart vs. Martin*, 99 Minn. 197. In this case the court said: "An examination of the Torrens laws of the different states and colonies discloses the fact that those of Minnesota and the Fiji Islands only contain no express exception of cases of fraud. All the original Torrens statutes carefully guard against the possibility of an owner being fraudulently deprived of

SEC. 74. [Effect of Registration Upon Adverse Claims.] Every registered owner of any estate or interest in land brought under this act shall hold the land free "from any and all adverse claims, rights, or encumbrances not noted on the certificate of title, except—

First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States which the statutes of this state cannot require to appear of record under registry laws.

Second. Taxes and levies assessed thereon but not delinquent.

Third. Any lease for a term not exceeding one year under which the land is actually occupied.

Cal. §34, 37-8, 41, 45-6.
 Colo. §30.
 Ill. §40, 42-4.
 Mass. §37-8, 54, 63.
 Minn. §3393.
 Miss. §25.

N. C. §25.
 N. Y. §392, 400.
 Ohio §22, 25, 98.
 Ore. §39.
 Wash. §30.

his property." When applicant omits names of parties holding easements and examiner mentions them and recommends, that they be made parties, registration without making them parties is void and subject to collateral attack for constructive fraud. "Any other conclusion would go far to remove the safeguards which make the law constitutional. It would make a strong argument for holding that the act was invalid, because the proceedings do not constitute due process of law." *Riley vs. Pearson*, 120 Minn. 210. Decree of registration is not good against claimant whose name, though known, is given incorrectly in application, and who has no actual notice. *Arnold vs. Smith*, 121 Minn. 116. The question whether an innocent purchaser of a registered Torrens title is protected against the fraud of his grantor in failing to disclose in the registration proceedings an unrecorded mortgage, cannot be raised by demurrer to answer pleading innocent purchase and a general denial of all the allegations of the complaint. *Henry vs. White*, 121 Minn. 527. Where owner fraudulently fails to mention unrecorded mortgage in application, and does not make mortgagee a party to proceedings for registration, held that innocent purchaser of registered title takes it free of lien. "It is difficult to see what would remain of the indefeasible character of a Torrens title, if the decree is open to collateral attack as against one who purchases in good faith for a valuable consideration, and with nothing to put him on inquiry as to fraud on the part of the applicant. *Henry vs. White*, 123 Minn. 182. "Good faith in the acquirement of title, within the meaning of the statute, does not require ignorance of adverse claims or defects in the title. Notice actual or constructive is of no consequence." So held in a suit for registering title by adverse possession. *Peters vs. Dicus*, 254 Ill. 379.

* Registration is good against purchaser at tax sale who fails to take out tax deed, and bars any claim for reimbursement of taxes and special assessments paid by claimant while holding certificate of tax sale, upon which the time for the execution of a deed subsequently expired without any deed being taken. *Snow vs. Glos*, 258 Ill. 275.

SEC. 75. [Same: Fraud or Forgery.] The foregoing section shall not apply to the benefit of a registered owner—

(1) In cases of fraud or forgery to which he is a party, or in which he is a privy without valuable consideration paid in good faith.

SEC. 76. [Land to Remain Forever Registered.] The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall forever remain registered land, subject to the provisions of this Act and all amendments thereof.

Cal. §44.	N. C. §26.
Colo. §33.	N. Y. §404.
Ill. §46.	Ohio §26, 86.
Mass. §44.	Ore. §45.
Miss. §26.	Wash. §33.

SEC. 77. [No Rights by Adverse Possession of Prescription.] No title to, nor right, nor interest in, registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

Cal. §35.	Miss. §27.
Colo. §34.	N. C. §27.
Ill. §41.	N. Y. §401.
Mass. §45.	Ohio §85.
Minn. §3371.	Ore. §40.

SEC. 78. [Effect of Subsequent Dealings With Registered Land.] Except as otherwise specially provided by this act, registered land and ownership therein shall be subject to the same rights, burdens and incidents as unregistered land, and may be dealt with by the owner, and shall be subject to the jurisdiction of the courts in the same "manner as if it had not been registered.

(2) But registration⁴⁸ shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument, or record to be registered is duly filed and entered in the office of the proper registrar.

"Mechanic's liens cannot be foreclosed in registration proceedings. This section "shows beyond doubt an intention on the part of the legislature to require all such liens to be foreclosed in the usual manner and under the provisions of the general statutes providing for their foreclosure and enforcement." *Reed vs. Siddall*, 94 Minn. 216.

"Our construction of this section is in keeping with the obvious purpose of the Torrens act to create an absolute presumption that the certificate of registration in the registrar's office at all times speaks the last word as to the title, thus doing away with secret liens and hidden equities. . . . This is the distinctive feature, the vital principle of the Torrens System. For the courts to refuse to recog-

(3) Subject to the provisions of section seventy-four hereof, no voluntary nor involuntary transaction shall affect the title to registered land until registered in accordance with the requirements of this Act.

Cal. §32, 39, 48, 53, 55-6,
58, 71, 84-8, 89-97, 101,
104.
Colo. §41, 45-7, 52, 54-5, 59,
61, 65, 67-8, 70-1, 76-7.
Ill. §38, 42-4, 47, 49, 52,
54-5, 59-67, 80-1, 84-91.
Mass. §49, 50, 55, 56, 59-62,
67, 69, 70, 72-3, 77-90,
103.
Minn. §3371, 3411, 3414-
15, 3422-5, 3431-2, 3440.

Miss. §14, 21, 28, 31.
N. C. §14, 21, 28.
N. Y. §402, 405-6, 410, 412,
415-21.
Ohio 26, 31, 35, 39, 44-56,
59-64, 66-7, 70-1, 77, 81,
84, 87-97.
Ore. §37, 41-3, 46, 48, 51,
53-4, 58-66, 79-80, 83-90.
Wash. §40, 44-6, 51, 53-4,
58, 60, 64, 66-7, 69-70,
75-6.

SEC. 79. [Conflicting Claims Between Registered Owners.]
In case of conflicting claims between registered owners, the right,
title or estate derived from or held under the older certificate of
title shall prevail.

Miss. §29.

N. C. §29.

PART X.

ASSURANCE FUND.

SEC. 80. [Fee for Original Registration.] Upon the filing of
the petition for the original registration of any land under this
act there shall be paid to the registrar one-tenth of one per centum
of the assessed value of such land as an assurance fund, which
shall be subject to the trusts and conditions hereinafter declared
for the uses and purposes of this act.

Colo. §83.
Ill. §9.
Mass. §93.
Minn. §3442.
Miss. §32.

N. C. §33.
N. Y. §426.
Ohio §102.
Ore. §98.
Wash. §82.

nize and enforce it would be to emasculate the law, and by construc-
tion make it not the Torrens System of land titles, but a mere change
in the form of the record, a mere modification of the recording act." *Brace vs. Superior Land Co.*, 65 Wash. 681. A mechanic's lien,
recorded prior to registration but with insufficient description of
land, of which applicant had no actual notice, and which was not
reported by examiner, is barred by registration, and does not affect
title. "The registration proceedings were regular, and there was
no fraud in obtaining the decree. It follows that the plaintiffs were
bound by the decree, although it did not recognize or establish their
lien." *Doyle vs. Wagner*, 108 Minn. 443.

SEC. 81. [Payments Into State Treasury Upon Trust.] All moneys received by the registrars under the preceding section shall be kept in a separate account, and shall be paid into the state treasury upon the special trust and condition that the same shall be set aside by the in trust as a separate fund for the uses and purposes of this act, to be known as the "land registration assurance fund," which said fund is hereby appropriated to the uses and purposes set forth in this act.

Cal. §108.
 Colo. §84.
 Ill. §100.
 Mass. §94.
 Minn. §3443.
 Miss. §32.

N. C. §33.
 N. Y. §426.
 Ohio §103.
 Ore. §99.
 Wash. §83.

SEC. 82. [Funds to Be Invested.] Said moneys, in so far as the same may not be required to satisfy any judgment certified against the assurance fund under section eighty-five of this act, shall be invested by the treasurer of the state in state bonds in trust for the uses and purposes set forth in this act until said fund amounts to the sum of (five hundred thousand) dollars; but the income, or so much thereof as may be required therefor, may be applied towards the payment of the expenses of the administration of this act and the satisfaction of any such judgment.

Whenever and so long as the face value of the bonds purchased as aforesaid equals said sum of (five hundred thousand) dollars, other moneys thereafter coming into said fund, together with any income not required for the purposes aforesaid, shall be transferred from the land registration assurance fund to the general treasury.

Colo. §84.
 Ill. §100.
 Mass. §100.
 Minn. §3443.
 Miss. §32.

N. C. §33.
 N. Y. §426.
 Ohio §103, 111.
 Ore. §99.
 Wash. §83.

SEC. 83. [Suits Against the Assurance Fund.] Any person who had no actual notice of any registration under this act by which he may be deprived of any estate or interest in land, and who is without remedy hereunder, may within two years next after the time at which the right to bring such action shall have first accrued to him or to some person through whom he claims, bring an action against the treasurer of the state in the

court of for the recovery out of the assurance fund of any damages to which he may be entitled by reason of such deprivation.

(2) The assurance fund shall be defended in such action and in any appeal by the attorney-general for the state.

(3) The measure of damages in such action shall be the value of the property at the time the right to bring such action first accrued, and any judgment rendered therefor shall be paid as hereinafter provided.

(4) If any person entitled to bring such action be under the disability of infancy, insanity, imprisonment, or absence from the state in the service of the state or of the United States at the time the right to bring such action first accrued, the same may be brought by him or his privies within two years after the removal of such disability.

Colo. §85, 88.

Ill. §101, 103.

Mass. §95, 102.

Minn. §3444, 3446-7.

Miss. §33, 38.

N. C. §34, 39.

N. Y. §427, 429.

Ohio §104, 107-9.

Ore. §100, 102.

Wash. §84, 87.

SEC. 84. [Defendants to Suits Against Assurance Fund.] If such action be brought to recover for loss or damage arising only through the legal operation of this act, then the treasurer of the state shall be the sole defendant.

(2) But if such action be brought to recover for loss or damage arising on account of any registration made or procured through the fraud or wrongful act of any person not exercising a judicial function, then both the treasurer of the state and such person shall be made parties defendant.

Colo. §86.

Ill. §102.

Mass. §96.

Minn. §3445.

Miss. §34.

N. C. §35.

N. Y. §428.

Ohio §105.

Ore. §101.

Wash. §85.

SEC. 85. [Judgments Against the Assurance Fund.] If judgment be rendered for the plaintiff in any such action, execution shall issue against the defendants, if any, other than the treasurer of the state.

(2) And if such execution be returned unsatisfied in whole or in part, or if there be no such defendants, then the clerk of the court in which the judgment was rendered shall certify to

the the amount due on account thereof, and the same shall then be paid by said treasurer out of the assurance fund on warrant from said under the special appropriation hereby made of said fund for that purpose.

(3) Any person other than the treasurer of the state against whom any such judgment may have been rendered shall remain liable therefor, or for so much thereof as may be paid out of the assurance fund, and said treasurer may bring suit at any time to enforce the lien of such judgment against such person or his estate for the recovery of any amount, with interest, paid out of the assurance fund as aforesaid.

Colo. §86.

Ill. §102.

Mass. §97.

Minn. §3445.

Ohio §106.

Wash. §85.

SEC. 86. [When Assurance Fund Not Liable.] The assurance fund shall not, under any circumstances, be liable for any loss, damage, or deprivation occasioned by a breach of trust, whether express, implied, or constructive, on the part of the registered owner of any estate or interest in land.

Colo. §87.

Mass. §101.

Minn. §3446.

Miss. §37.

N. C. §38.

N. Y. §429.

Ohio §108.

Wash. §86.

SEC. 87. [How Judgments Shall be Satisfied Out of Assurance Fund.] If at any time the assurance fund be insufficient to satisfy any judgment certified against it as aforesaid, the unpaid amount shall bear interest and be paid in its order out of any moneys thereafter coming into said fund.

Mass. §98.

Minn. §3445.

Miss. §35.

N. C. §36.

Ohio §110.

PART XI.

FEES FOR REGISTRATION.

SEC. 88. [Fees of Registrar and Other Officers of the Court.] The fees payable under this act shall be as follows:

(a) [To Registrars.] For docketing, indexing, and filing any original petition and exhibits therewith and publishing and mailing the notices thereof, the postage required, and three dollars.

For docketing, indexing, and filing any other paper, fifty cents.

For the entry of the original certificate of title and issuing one duplicate certificate and recording and indexing memorandum, three dollars.

For each additional duplicate, fifty cents.

For the registration of any writing, instrument, or record, or any memorial, including every act necessary therefor, one dollar.

(b) [To Examiners of Titles.] For examining title and making report to the court, one-tenth of one per centum of the value of the land, and postage, and ten dollars.

(c) [To Sheriffs.] For ascertaining and reporting to court the names and addresses of the persons actually occupying the premises described in any petition, one dollar.

(d) For any service of the registrars, or of any sheriff or surveyor not specially provided for herein, such fee as may be allowed by law for like services in other cases.

Cal. §114.

Colo. §95-6.

Ill. §107-8.

Mass. §109.

Minn. §3449-50.

Miss. §30.

N. C. §30.

N. Y. §432.

Ore. §106-7.

Wash. §94-5.

PART XII.

APPLICATION OF ACT.

SEC. 89. [Referendum.] This act shall be construed liberally for the purpose of effecting its general intent (but shall not apply to land in any city or county, except the, until " it shall be so determined by the votes of a majority of those voting for or against the adoption thereof at any general or special election to be held in such city or county, after notices thereof shall have been duly posted for at least thirty days at each voting precinct in such city or county by order of the judge of the

"The referendum is not unconstitutional. Legislative power is not "delegated," but takes effect under certain conditions. *People vs. Simon*, 176 Ill. 165. Legislature may amend act without a second referendum. *Brooke vs. Glos*, 243 Ill. 392. And to the same effect is *Waugh vs. Glos*, 246 Ill. 604, and *Mihalik vs. Glos*, 247 Ill. 597, and *Culver vs. Waters*, 248 Ill. 163. Illinois act is not unconstitutional as local law because only yet adopted by Cook County. *Tower vs. Glos*, 256 Ill. 121.

..... court of such city or county upon the petition of one hundred freeholders residing in such city or fifty freeholders residing in such county, the question to be submitted by ballots upon which the words "FOR LAND REGISTRATION" and "AGAINST LAND REGISTRATION" shall be printed, and one or the other of said expressions being stricken out as the voter may favor or oppose the act.)

III. §110.

SEC. 90. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

EXHIBIT B.

NOTE.

The Uniform Foreign Probate Act and the Uniform Flag Law, in the form following, were adopted, approved and recommended to the states for adoption by the National Conference at its twenty-fifth annual meeting as shown by the votes printed in the minutes in this volume, pp. 89, 96.

AN ACT

PROVIDING FOR THE PROBATE IN THIS STATE OF PROBATED
FOREIGN WILLS AND TO MAKE UNIFORM IN THAT REGARD
THE LAWS OF THE STATES ENACTING THE SAME.

Be it enacted, etc.

SECTION 1. A will duly proved, allowed and admitted to probate outside of this state, may be allowed and recorded in the proper court of any county in this state in which the testator shall have left any estate.

SEC. 2. When a copy of the will and the probate thereof, duly authenticated, shall be presented by the executor or by any other person interested in the will, with a petition for probate, the same must be filed and a time must be appointed for a hearing thereon

and such notice must be given as required by law on a petition for the original probate of a domestic will.

SEC. 3. If upon the hearing, it appears to the satisfaction of the court that the will has been duly proved, allowed and admitted to probate outside of this state, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this state, it must be admitted to probate, which probate shall have the same force and effect as the original probate of a domestic will.

SEC. 4. When a duly authenticated copy of a will from any state or country where probate is not required by the laws of such state or country, with a duly authenticated certificate of the legal custodian of such original will that the same is a true copy, and that such will has become operative by the laws of such state or country, and when a copy of a notarial will in possession of a notary in a foreign state or country entitled to the custody thereof (the laws of which state or country require that such will remain in the custody of such notary), duly authenticated by such notary, is presented by the executor or other persons interested to the proper court in this state, such court shall appoint a time and place of hearing and notice thereof shall be given as in case of an original will presented for probate.

If it appears to the court that the instrument ought to be allowed in this state, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same effect as if originally proved and allowed in the said court.

SEC. 5. All laws and parts of laws in conflict or inconsistent herewith be and the same are hereby repealed.

SEC. 6. This act may be cited as the Uniform Foreign Probate Act, and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

SEC. 7. This act shall take effect from and after the day of.....

EXHIBIT C.

AN ACT

TO PREVENT AND PUNISH THE DESECRATION, MUTILATION OR IMPROPER USE OF THE FLAG OF THE UNITED STATES OF AMERICA, AND OF THIS STATE, AND OF ANY FLAG, STANDARD, COLOR OR ENSIGN AUTHORIZED BY LAW.

SECTION 1. Any person, who in any manner, for exhibition or display, shall, after this act takes effect, place or cause to appear, any word, figure, mark, picture, design, drawing or any advertisement, of any nature, upon any flag, standard, color or ensign of the United States or the state flag of this state, or shall expose to public view any such flag, standard, color or ensign, upon which after this act takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall, after the first day of expose to public view, manufacture, sell, expose for sale, give away or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this act takes effect, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark, or distinguish the article or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding (one hundred dollars), or by imprisonment for not more than (thirty days) [or both, in the discretion of the court].

SEC. 2. The words flag, standard, color, or ensign, as used in this act, shall include any flag, standard, color, ensign, or any picture or representation thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be said flag, standard, color, or ensign of the United States of America, or of this state, or a picture or a representation thereof, upon which shall be shown the design thereof.

SEC. 3. When by any statute of this state, the use of the flag of the United States of America, of the flag of this state, or of any picture or representation of such flag, is made penal or unlawful, such statute shall not apply to any act permitted by the statutes of the United States of America, or of this state, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted or placed said flag with no design or writing thereon and disconnected from any advertisement.

SEC. 4. This act shall include any flag, standard, color or ensign authorized by the laws of the United States of America and of this state.

SEC. 5. All laws or parts of laws in conflict or inconsistent thereto be and the same are hereby repealed.

SEC. 6. This law shall be so interpreted and construed as to effectuate its general purpose to make uniform laws of the states which enact it.

SEC. 7. This act may be cited as the Uniform Flag Law.

EXHIBIT D.

States, Territories and Federal District.	Negotiable In- struments.	Sales.	Warehouse Re- ceipts.	Divorce.	Bills of Lading.	Stock Transfer.	Family Deser- tion.	Probate of Foreign Wills.	Marriage Eva- sion.	Partnership.	Workmen's Com- pensation.	Cold Storage.
Alabama.....	Yes	No	Yes	No	No	No	No	No	No	Yes	No	No
Arizona.....	"	Yes	No	"	"	"	"	"	"	"	"	"
Arkansas.....	"	No	"	"	"	"	"	"	"	"	"	"
California.....	No	"	Yes	"	Yes	"	"	"	"	"	"	"
Colorado.....	Yes	"	"	"	No	"	"	"	"	"	"	"
Connecticut.....	"	Yes	"	"	"	"	"	No	"	"	"	"
Delaware.....	"	No	Yes	Yes	No	"	"	"	"	"	"	"
Florida.....	"	"	No	No	"	"	No	"	"	"	"	"
Georgia.....	No	"	"	"	"	"	"	"	"	"	"	"
Idaho.....	Yes	"	"	"	"	"	"	"	"	"	"	"
Illinois.....	"	Yes	Yes	"	Yes	"	"	"	Yes	"	"	"
Indiana.....	"	No	No	"	No	"	"	"	No	"	"	"
Iowa.....	"	"	Yes	"	Yes	"	"	"	"	"	"	"
Kansas.....	"	"	Yes	"	No	"	Yes	Yes	"	"	"	"
Kentucky.....	"	"	No	"	"	"	No	No	"	"	"	"
Louisiana.....	"	"	Yes	"	Yes	Yes	Yes	Yes	Yes	"	"	"
Maine.....	Yes	"	No	"	No	No	"	No	No	"	"	"
Maryland.....	Yes	Yes	Yes	"	Yes	Yes	"	Yes	"	Yes	"	Yes
Massachusetts.....	"	"	"	"	"	"	Yes	"	Yes	No	"	No
Michigan.....	"	"	"	"	Yes	"	"	"	No	"	"	"
Minnesota.....	"	No	"	"	No	No	"	No	"	"	"	"
Mississippi.....	"	"	No	"	"	"	"	"	"	"	"	"
Missouri.....	"	"	Yes	"	"	"	"	"	"	"	"	"
Montana.....	"	"	Yes	"	"	"	"	"	"	"	"	"
Nebraska.....	"	Yes	Yes	"	"	"	"	Yes	"	"	"	"
Nevada.....	"	No	No	"	"	"	"	No	"	"	"	"
New Hampshire.....	"	"	"	"	"	"	"	"	"	"	"	"
New Jersey.....	"	Yes	Yes	Yes	Yes	Yes	"	"	"	"	"	"
New Mexico.....	"	No	"	No	No	No	"	"	"	"	"	"
New York.....	"	Yes	"	"	Yes	Yes	"	"	"	"	"	"
North Carolina.....	"	No	No	"	No	No	"	"	"	"	"	"
North Dakota.....	"	"	"	"	"	"	Yes	"	"	"	"	"
Ohio.....	"	Yes	Yes	"	Yes	Yes	"	"	"	"	"	"
Oklahoma.....	"	No	No	"	No	No	"	"	"	"	"	"
Oregon.....	"	"	Yes	"	"	"	"	"	"	"	Yes	"
Pennsylvania.....	"	Yes	"	"	Yes	Yes	"	"	"	Yes	No	"
Porto Rico.....	No	No	No	"	No	No	"	"	"	No	"	"
Rhode Island.....	Yes	Yes	Yes	"	Yes	Yes	"	Yes	"	"	"	"
South Carolina.....	"	No	No	"	No	No	"	No	"	"	"	"
South Dakota.....	"	"	Yes	"	"	"	"	"	"	"	"	"
Tennessee.....	"	"	"	"	"	"	"	"	"	"	"	"
Texas.....	No	"	No	"	"	"	Yes	"	"	"	"	"
Utah.....	Yes	"	Yes	"	"	"	No	"	"	"	"	"
Vermont.....	"	"	"	"	Yes	"	Yes	"	Yes	"	"	"
Virginia.....	"	"	"	"	No	"	"	"	No	"	"	"
Washington.....	"	"	"	"	"	"	"	Yes	"	"	"	"
West Virginia.....	"	"	No	"	"	"	"	No	"	"	"	"
Wisconsin.....	"	Yes	Yes	Yes	"	Yes	Yes	Yes	"	Yes	"	"
Wyoming.....	"	No	No	No	"	No	No	No	"	No	"	"
Alaska.....	"	Yes	"	"	"	"	Yes	"	"	"	"	"
Hawaii.....	"	No	No	"	"	No	"	No	"	"	"	"
District Columbia.....	"	"	Yes	"	"	"	No	"	"	"	"	"
Philippine Islands.....	"	"	"	"	"	"	"	"	"	"	"	"

Acknowledgment of Deeds Act passed by Maryland.

Torrens Act passed by Virginia.

Bills of Lading Act passed by Alaska.

IV.

CONTRIBUTIONS OF COMPARATIVE LAW BUREAU.

LEGISLATION IN HOLLAND DURING THE YEAR 1915.

Although on account of the international situation, legislative activity in Holland was again restricted during the past year within narrow limits, two laws were passed which may be considered of general interest. A section was added to the penal code, making unfair competition a crime. While certain acts, which might be included in a definition of unfair competition, were punishable as the law stood, there was no general provision directed against unfair competition as such; even the civil remedy was inadequate. With the exception of some specific provisions, the only section applicable was 1401 of the Civil Code, which provides that one is liable for the damage caused by one's unlawful act. The section corresponds in substance with section 1382 of the French Civil Code. The courts in France have built on this slender foundation a system which recognizes liability, not only for acts which infringe on strict legal rights, but for all acts which offend against fair dealing and public morality; against "*Sittlichkeit*," to use the German expression. The courts practically legislate, and go far beyond not only our common law courts, but beyond the cases for which the right to an injunction is recognized in courts of equity.

The courts in Holland have given a restricted interpretation to the section and consider offences against public morality, if they do not interfere with recognized legal right, as outside of its scope. The situation was generally conceded to be intolerable, but there was great difference in opinion as to the remedy to be applied. Many were in favor of a change in the wording of the civil code and giving legislative sanction to the broad doctrine laid down by the French courts. In addition to this the introduction of injunctions and of the doctrine of contempt of court was strongly advocated, and it was claimed that it was best to wait with the introduction of the penal provision until the effect of such changes in the civil law was ascertained.

On the other hand it was pointed out that even in France, notwithstanding the broad interpretation given to section 1382, it was generally conceded that the evil could not be eradicated without a penal provision; that in Germany, although the new civil code gave a sweeping civil remedy, the existing penal provision had been extended and generalized. When it appeared that the government, although friendly to the proposed reform, did not intend to take any steps for its realization except in connection with the general revision of the penal code, which might not be taken up for a long time, a member of the second chamber, Mr. Aalberse, made use of the right of initiative, which is seldom exercised, and introduced the law which was finally adopted. Rejecting the system, which was the basis of the German law of 1896, of enumerating specific acts as constituting unfair competition, the law introduced by him provided generally that anyone who for the purpose of preserving or extending a commercial or industrial establishment carried on by himself or another commits any deceitful act for the purpose of misleading the public or any definite person is punished, if any damage be caused by such act to the competitors of himself or such other person, as being guilty of unfair competition, with imprisonment not to exceed one year, or a fine not to exceed 900 guilders.

It will be noted that possible damage to competitors is one of the elements of the offense. It was suggested that proof of actual damage is not necessary, but only that the act is of such a character that such damage would naturally result from it. At the same time there is no doubt that this provision introduces an element of uncertainty. This feature of the law can be explained by the fact that the moving powers behind the law were the retail dealers, a class which was strongly organized. It was frankly admitted by the proposer that the primary object of the law is protection of this class. It is perhaps to be regretted that this provision has not been omitted, and that the protection of the public and not the interest of a specific class made the primary object of the law. The reproach that we have to do here with class legislation would have been avoided, and besides, the courts which, as was admitted, have a tendency to restrict penal provisions within the narrowest limits, would not have been given an opportunity to practically nullify the law.

The other law of more than local importance makes for the first time conditional conviction and release on probation or parole after two-thirds of the sentence has been served a part of the penal system. The so-called "conditional conviction" is different from the American suspension of sentence in that a definite sentence is at once pronounced by the court; its execution, however, is suspended during the probationary period. In other important respects, however, the English-American system is followed instead of the French-Belgian system. While in the latter no condition can be imposed, except that during the probationary period the person convicted shall not commit another offense, the new law gives the court the power to impose other conditions with the sole restriction that they shall not be such as to impair the religious or political rights of the person convicted. The special conditions are allowed only where the offense is of some gravity and the sentence imposed exceeds two months, except that the condition that the damage caused by the unlawful act shall be made whole can be imposed in every case in which imprisonment is part of the sentence.

At the same time the court may direct that one of the private institutions which have been organized for that purpose, or an official probation officer, shall afford to the person convicted aid and assistance in complying with the conditions imposed.

The conviction can be conditional only in case it does not exceed a term of one year. An amendment was proposed to omit this limitation, but it was afterwards withdrawn. It was pointed out in support of the proposed limitation that the court under existing laws can impose, where the circumstances make it advisable, a very light sentence in all cases, and that therefore, where a sentence of more than one year is imposed, such fact conclusively shows that the crime and the criminal are such that public interest requires that actual punishment shall be inflicted at once.

In connection with the law, and to secure its due execution, a royal decree was promulgated regulating in detail the mode in which such aid and assistance shall be given, and what institutions shall be designated for that purpose. A new decree was also issued taking the place of the one promulgated in 1910, regulating in general the mode in which the "reclasseering" (rehabilitation)

of all persons who have either been discharged on parole or who have actually served their sentence, shall be promoted. This decree was intended to carry out the provision of the penal code on the subject. It is provided that such object shall be promoted either by support of private institutions organized for that purpose, or by direct action on the part of the state. Subsidies to the extent of three-fifths, and in some cases of four-fifths, of the expense incurred by such private institutions can be awarded, and special state officials are appointed to carry out such object. Assistance can also be given to the families of prisoners while undergoing their sentence.

A. L. P.

V.

ORGANIZATION AND WORK OF THE BUREAU OF
COMPARATIVE LAW.

The place of the former Annual Bulletin of the Bureau of Comparative Law has been taken by this JOURNAL.

The objects of the Bureau continue as heretofore. They include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Bureau of Comparative Law receive the AMERICAN BAR ASSOCIATION JOURNAL every quarter.

All members of the Association are by that fact also members of the Bureau. Any State Bar Association can become a member on payment of \$15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the AMERICAN BAR ASSOCIATION JOURNAL. Any county, city, district, or colonial Bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of \$6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and to receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of \$3 annually, and will then receive the JOURNAL.

Distinguished foreign jurists, legislators, or scholars may be elected honorary members. They pay no fees.

The authorship of the contributions of the Bureau to the JOURNAL is indicated in each case by the initials of the writer.

The next meeting of the Bureau will be held at Chicago, Ill., at 2 P. M., Wednesday, August 30, 1916.

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All editorial communications should be addressed to the Chairman, who will see that they reach the proper editor. All books for review should also be sent to him.

EXCHANGE LIST.

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American Political Science Review, Baltimore, Md.
American Society for Judicial Settlement of International Disputes,
Baltimore, Md.
Bureau of American Republics, Washington, D. C.
Case & Comment, Rochester, N. Y.
Central Law Journal, St. Louis, Mo.
Columbia Law Review, New York City.
Committee on Judiciary, House of Representatives, Washington, D. C.
Illinois Law Review, Chicago, Ill.
Legal Bibliography, Boston, Mass.
Ohio Law Bulletin, Norwalk, Ohio.
Patent and Trade Mark Review, New York.
Yale Law Journal, New Haven, Conn.
The Lawyer and Banker and Southern Bench and Bar Review, New Orleans, La.

FOREIGN.

Institut de Droit Comparé, Brussels, Belgium.
Istituto Guiridico della R. Università, Torino, Italy.
Instituto Ibero-Americano de Derecho Positivo Comparado, Madrid,
Spain.
The Journal of the Ministry of Justice, monthly, Petrograd, Russia.
Juristische Blätter, Vienna, Austria.
Pravo (law), weekly, Petrograd, Russia.
Revista de Legislación y Jurisprudencia, San Juan, P. R.
Revista de Legislación Universal y Jurisprudencia Española, Madrid,
Spain.
Revista General de Legislación y Jurisprudencia, Madrid, Spain.
Société de Législation Comparée, Paris, France.
Society of Comparative Legislation, London, England.
Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre, etc., Berlin, Germany.

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Ministerio de Relaciones Exteriores, Buenos Aires, Argentina.

Oficina de Canjes, Ministerio de Relaciones Exteriores, Montevideo, Uruguay.

Ministerio de Relaciones Exteriores, Santo Domingo.

Ministerio de Relaciones Exteriores, Panama.

Biblioteca Nacional, Santiago de Chile.

Urteskrift for Retsvaesen, Copenhagen.

STATE BAR ASSOCIATIONS AND OTHER INSTITUTIONS NOW MEMBERS OF THE BUREAU.

Pennsylvania Bar Association.

Minnesota State Bar Association.

State Bar Association of Connecticut.

Bar Association of Tennessee.

Michigan State Bar Association.

Law Association of Philadelphia.

Bar Association of the City of Boston.

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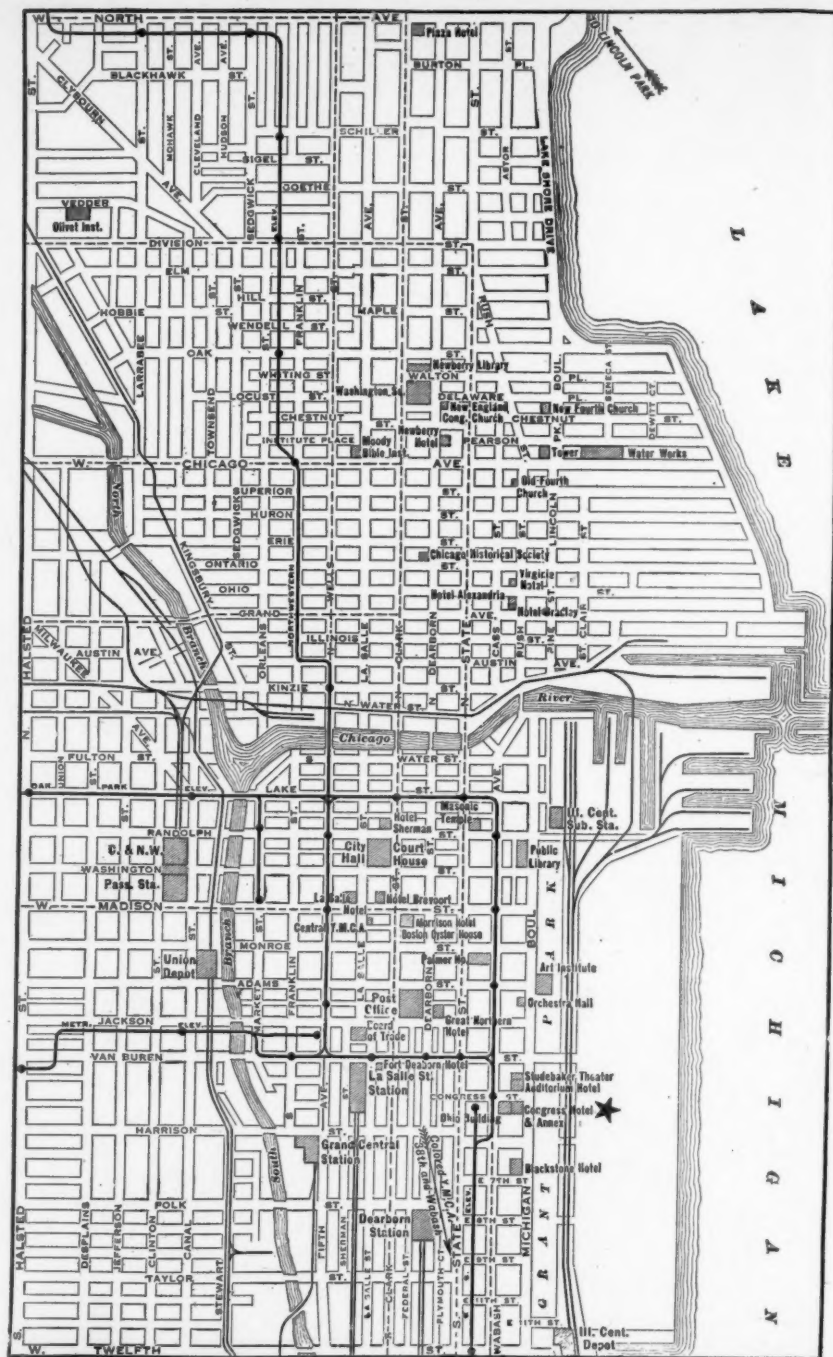
COMPARATIVE LAW BUREAU PUBLICATIONS

OFFICIAL PUBLISHER: THE BOSTON BOOK CO., BOSTON, MASS.

- Visigothic Code, by Scott, of this Editorial Staff.
- Swiss Civil Code, by Shick and Wetherill, of this Editorial Staff.
- Civil Code of Argentina, by Joannini; soon to be published by this Bureau.
- Civil Code of Peru, by Joannini; soon to be published by this Bureau.
- The Seven Parts (Las Siete Partidas), by Scott, of this Editorial Staff; soon to be published by this Bureau.

FOREIGN CODES AND LAWS TRANSLATED INTO ENGLISH,
NOW PURCHASABLE.

- French Civil Code, by Cachard.
- French Civil Code, by Wright.
- Japanese Civil Code, by Gubbins.
- Japanese Civil Code, by Lonholm.
- Japanese Civil Code, annotated by De Becker.
- Japanese Commercial Code, by Yang Yin Hang.
- Japanese Code of Commerce, by Lonholm.
- Japanese Penal Code, by Lonholm.
- German Civil Code, by Chung Hui Wang.
- German Civil Code, by Loewy, under the direction and annotated by a joint committee of the Pennsylvania Bar Association and the University of Pennsylvania.
- Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
- Laws of Mexico, by Wheless, of this Editorial Staff.
- Mining Law of Mexico, by Kerr, of this Editorial Staff.
- Mining Laws of Colombia, by Eder, of this Editorial Staff.
- Commercial Laws of the World, Am. Ed., Boston Book Co.
- German Prize Code, as in force July 1, 1915; translated by C. H. Huberich and Richard King (Baker, Voorhis & Co., N. Y.).



★ Headquarters American Bar Association

HOTEL ACCOMMODATIONS AT CHICAGO, ILLINOIS.

CONGRESS HOTEL AND ANNEX.

EUROPEAN PLAN.

Room for one person, detached bath.....	\$2.00 to	\$3.00
Room for one person, private bath.....	3.00 to	6.00
Room for two persons, detached bath.....	3.00 to	5.00
Room for two persons, private bath.....	5.00 to	7.00
Two connecting rooms, private bath, for two persons..	6.00 to	10.00
Two connecting rooms, private bath, for three or four persons	8.00 to	14.00
Corner suites, parlor, bed-room and private bath....	10.00 to	50.00

THE BLACKSTONE.

One person in room without bath.....	2.50	
One person in room with bath.....	3.50 to	6.00
Double rooms containing two beds and bath.....	5.00 and	6.00
Double rooms containing two beds and bath (larger rooms)	7.00 and	8.00
Two single communicating rooms with intervening bath, one person in each room.....	6.00 to	8.00
Parlor, reception hall, bed-room and bath.....	10.00 and	up

AUDITORIUM HOTEL.

One person in room without bath.....	2.00 and	up
Two persons in room without bath.....	3.00 and	up
One person in room with bath.....	2.50 and	up
Two persons in room with bath.....	4.00 and	up
Two connecting single rooms with bath, for two....	5.00 and	up
Parlor, bed-room and bath.....	6.00 and	up

HOTEL LASALLE.

Room for one person with detached bath.....	2.00 to	3.00
Room for one person with private bath.....	3.00 to	5.00
Room for two persons with detached bath.....	3.00 to	4.00
Room with private bath—double room.....	5.00 to	8.00
Single room with double bed.....	4.00 to	5.00
Two connecting rooms with bath, for two.....	5.00 to	8.00
Two connecting rooms with bath, for three.....	6.00 to	9.00
Two connecting rooms with bath, for four.....	7.00 to	12.00

CHICAGO BEACH HOTEL.

One person in room without bath.....	2.00 and	3.00
Two persons in room without bath.....	3.00 to	4.00
One person in room with bath.....	3.50 to	7.00
Two persons in room with bath.....	5.00 to	8.00
Two rooms with bath for 2 persons.....	8.00 and	up
(For each additional person in two-room suite with bath extra charge of \$1.50 per day.....)	2.00 and	up

THE VIRGINIA HOTEL.

One person in room without bath.....	2.00 per day	
Two persons in room without bath.....	3.00 per day	
One person in room with bath.....	2.00 and	2.50
Two persons in room with bath.....	3.00 and	3.50
Two connecting single rooms and bath.....	\$4.00, 5.00 and	7.00

*Hotel Accommodations***HOTEL SHERMAN.****EUROPEAN PLAN.**

Room with bath for one person.....	\$2.00 to	\$5.00
Room with bath for two persons.....	3.50 to	7.00
Two-room suites for two persons.....	5.00 to	10.00
Two-room suites for four persons.....	7.00 to	12.00
Parlor, two bed-rooms, two baths.....	12.00 and	15.00

PALMER HOUSE.

One person in room without bath.....	1.50	
Two persons in room without bath.....	2.00	
One person in room with bath.....	2.50 upwards	
Two persons in room with bath.....	3.00 upwards	
Two connecting single rooms with bath.....	5.00 upwards	

THE GREAT NORTHERN HOTEL.

One person in room with bath.....	2.00 to	4.00
Two persons in room with bath.....	3.00 to	5.00
One person in room without bath.....	1.50 to	2.00
Two persons in room without bath.....	2.50 to	3.00

PLAZA HOTEL.

One person in room with bath.....	1.50 to	3.00
(Two persons in same room 50 cents a day extra.)		
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Two-room suites with bath for more than one person		
50 cents a day extra for each person.		

FORT DEARBORN HOTEL.

Single rooms with private bath.....	1.50	
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Rooms with bath, single.....	2.00 and	up
Rooms with bath, double.....	3.00 and	up

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One person in room without bath.....	\$4.00	
Two persons in room without bath.....	7.00	
One person in room with bath.....	5.00	
Two persons in room with bath.....	8.00	
Two connecting single rooms with bath, for two....	9.00	

